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The question as to the validity of instruments which, under the act of congress, require a revenue stamp, but upon which through inadvertence or otherwise, stamps have not been placed, has given rise to considerable speculation and contention. The Court of Appeals of Maryland has recently passed upon the question as to the failure to affix stamps to an assignment of mortgage—Wingert v. Zeigler. The act of congress provides a penalty for one who shall issue assignments of mortgages and other enumerated instruments without affixing revenue stamps and canceling the same as required by law, with intent to evade the provisions of the statute, and provides that any such instrument shall be deemed invalid. It was held by the Maryland court that "such instrument" refers only to one left unstamped with intent to evade the law, and hence where an assignment of a mortgage was left unstamped through inadvertence, and not willfully, a sale thereunder was validated by the subsequent affixing and canceling of the proper stamps, and hence the purchaser at such sale acquired as good a title as though the assignment had been stamped when made, where no rights of other persons were acquired in the meantime. The court very properly says that it is scarcely possible that congress intended that one who deliberately and intentionally violated the law might escape by paying "a fine not exceeding fifty dollars," while one who was perfectly innocent of so doing should have his title deed or other valuable paper declared invalid and of no effect. Under the statute, it is the duty of the grantor in the deed, or the party issuing, selling, or transferring the instrument, document, or other paper, to affix the stamp; and, if the construction contended for be followed, a designing grantor, taking the chances of a prosecution, might impose on an innocent purchaser, whose title would be worthless, although he was absolutely free from any suspicion of wrongdoing or intention of evading the law. In Green v. Holway, 101 Mass. 243, Justice Gray reviewed the various acts of congress on this subject, and cited authorities to show that the provision, "and such instrument, document or paper shall be deemed invalid and of no effect," required a reference to the previous provisions in the section to ascertain the meaning of the word "such," holding that it only applied to those on which stamps had been omitted with intent to evade the provisions of the law. In Moore v. Quirk, 105 Mass. 49, the case was expressly affirmed. In Black v. Woodrow, 39 Md. 194, this court held that an instrument subject to the act of 1866 was not void or inadmissible in evidence, if the omission to stamp it was without intent to evade the provisions of the act. Many other authorities might be cited, including decisions of the Supreme Court of the United States, to show that in regard to some of the earlier acts of congress such was the interpretation; and we think this provision in the present law should be so construed, and that it was intended to apply only to those cases where the stamp was omitted to evade the provisions of the law.

The twenty-third annual meeting of the American Bar Association was held at Saratoga, N. Y., on Wednesday and Thursday, August 29th and 30th. The President, Hon. Charles H. Manderson, presided. His address was notable in that it contained a letter from Hon. John Hay, secretary of state, submitting an interesting memorandum prepared by Mr. Edmond Kelly, a delegate from the United States to the international congress of law, now sitting at Paris, in which he sets forth considerations regarding the creation of an international bureau for the collection and utilization of the world's legislation, which, he suggests, shall be created by a congress of all nations to sit in Paris during 1901. Mr. Manderson gave his full reply, ending as follows: "I heartily approve the suggestion of Mr. Edmond Kelly and hope the department of State will lend its countenance to the project that the congress of international law shall extend to the nations of the world an invitation for a congress to create the proposed bureau." Mr. Manderson deprecated in strongest terms the increasing tendency to over-legislate and gave these statistics: "Few realize that there were enacted in 1899 four thousand eight hundred

and thirty-four general and nine thousand three hundred and twenty-five local, special or private laws, making a total (hardly entitled to be called a grand total) of fourteen thousand one hundred and fifty-nine laws in the States alone. The proportion is as large in 1900, the only relief being that fewer States held legislative sessions." There were addresses on "Ultra Vires Corporation Leases," by Edward Harriman, of Chicago; on "The March of the Constitution," by Hon. George R. Peck, of Chicago; on "A Hundred Years of American Diplomacy," by Hon. John Bassett Moore, of New York City. Mr. Edward Wetmore, of New York City, was elected president for 1901.

The following resolution regarding the death of Lord Russell was unanimously adopted by a rising vote. "The American Bar Association has heard with peculiar sorrow of the death of Lord Russell, of Killowen, Lord Chief Justice of England, and desires to enter upon its records some permanent expression of honor and esteem for his memory. The members of this association had followed and known well that brilliant career which made Sir Charles Russell the conspicuous and admired leader of the English bar, and they had rejoiced at the elevation of one so competent to the great office which he held with such distinction at the time of his death. Four years ago we welcomed him here as our chief guest. Recalling now the noble address which he delivered to us on the 30th of August, 1896, and the deep-felt enthusiasm inspired in the hearts of all who listened to him, the members of this association desire to express their admiration for the manner in which he has filled his high office, their grateful recollection of his visit here, their affectionate regard for his memory, and their respectful sympathy with the bench and bar of England in so great a loss to our common profession." In acknowledging the receipt of a copy of the above resolution, Mr. Charles Russell, a son of Lord Russell, has recently sent to the secretary of the American Bar Association the following letter:

"37 Norfolk Street, W. C.,
London, 1st Oct. 1900.

Dear Sir:—On my return from America I find your letter of the 11th September. I beg you will convey to the American Bar Association the thanks of my father's family for the resolution of which you send me a copy. It needs no words of mine to tell you how warm my father's regard was for the bar of the United States among the members of which he was proud to count many dear personal friends. The resolution you send me will be preserved by me with care and pride.

Believe me, yours sincerely,
CHARLES RUSSELL."

NOTES OF IMPORTANT DECISIONS.

TRUST DEED — ACCEPTANCE — VALIDITY — TENDER—RIGHTS OF ASSIGNEE.—Davies v. Dow, 83 N. W. Rep. 50, decided by the Supreme Court of Minnesota, was an action by an assignee in insolvency to recover possession or the value of a stock of merchandise upon which the defendant had a mortgage, but the lien of which the assignee claimed had been discharged by a tender of the amount thereof before action brought. The tender was made prior to the change of the rule as to keeping it good made by Laws 1897, ch. 292, § 8. It appeared on the trial that the assignee, prior to making an assignment in insolvency, executed a trust deed of the property, subject to the mortgage, to a third party, for the benefit of such of his creditors as assented thereto. Held: 1. That the trust deed was void on its face as to non-assenting creditors, and as to the plaintiff as such assignee, and therefore it did not appear from the evidence that the title to the goods in question was in a third party, and it was not error for the trial court to refuse to make findings as to such trust deed. 2. A tender, to be good, must not be made upon any condition to which the creditor has a right to object. A party, however, who tenders money, has a right to exclude any presumption against himself that the sum tendered is in part payment of the debt. Hence the tender in this case, which was in payment of the mortgage, was good. 3. A tender of the amount of a mortgage lien by the mortgagor's assignee in insolvency has the same effect as if made by the mortgagor. The tender, although not keept good, in each case discharges the lien, if fairly made and deliberately refused. 4. Such assignee may make such tender at any time before foreclosure sale, although the mortgagee has taken possession of the property under his mortgage after condition broken; and such tender, without being kept good, will discharge the lien of the mortgage precisely as if the tender had been made by the mortgagor.

INSURANCE — FORFEITURES — CONDITIONS—BREACH.—In Connecticut Fire Ins. Co. v. Jeary, decided by the Supreme Court of Nebraska, it appeared that it was conditioned in a policy of insurance "that the assured shall take an inven-

tory of stock hereby covered at least once a year, and shall keep books of account correctly detailing the purchases and sales of said stock, and shall keep all inventories and books securely locked in a fireproof safe or other place secure from fire in said store during the hours that said store is closed for business. Failure to observe the above conditions shall work a forfeiture of all claims under this policy." It was held that such provisions should be construed conjointly, and that, to work a forfeiture of the policy, there must be a failure to perform all the conditions named, and not any particular one of them. The court said in part:

"Having in view, however, the situation of the parties and the purposes sought to be accomplished by the contract of insurance, can it be said from the language used that it was the intention of the parties that the policy should be forfeited by the mere failure to comply with the one only of the conditions of the warranty? We think not. We are not disposed to impute to the company a desire to avoid responsibility under a fair contract, by it voluntarily entered into, upon a pretext so slight and with so little substantial reason therefor. It ought not to be presumed that a forfeiture of the entire policy, leaving to the assured no protection against contingencies from which consequences grave and serious in their character might flow, was contemplated by either party, except for weighty and important considerations. By a fair and reasonable construction of the contract of the parties to this action, a forfeiture was provided for, not for a failure to comply with one of the several conditions mentioned, but for all of them taken together. Had it been desired to have any other construction placed on its provisions, it would have been no difficult matter to so word the conditions of the warranty as to make a failure to comply with any one or more of them grounds for the forfeiture of the entire policy. This has not been done, and we are not disposed to give a broader or more liberal construction than the language used requires. The views herein expressed seem to be consonant with both reason and authority. We are not entirely without light upon the subject as to the views of other courts upon what we regard as kindred questions. In a very recent case in the Supreme Court of Iowa, in construing a clause in a policy of insurance against incumbrances upon the property insured, it is stated in the syllabus: 'A policy insuring both real and personal property provided that, "if the property should thereafter become mortgaged or incumbered," the policy should be void, and also declared that it should be forfeited if other insurance was taken out "on any of said property." Held, that since the provision for forfeiture for mortgaging did not provide a forfeiture for mortgaging "any" of the property, but treated "the property" as a whole, the policy would not be forfeited for a mortgage given on a part of the property only.' Says Judge Given in the opinion of the court: 'It is a familiar rule that forfeitures are not favored, that contracts will be strictly construed to avoid forfeitures, and that the burden is upon him who claims a forfeiture to clearly show that he is entitled to it. The language of the policy is, "or, if the property shall hereafter become mortgaged or incumbered," the policy becomes null and void. It is the property, not a part of it; not the real, nor the personal, but the whole property, the mortgaging of which renders the policy void.' To the same effect is Bailey v. Insurance Co., 16 Hun, 503, heretofore quoted. In our own State this court, in construing like clauses as to incumbrances, has not adopted the same line of reasoning as the courts whose opinions have last been referred to. It is here held that, where different classes of property are insured for specific sums, although the premium is paid in one sum in gross, the policy as to the different classes of property is separable and divisible, and a mortgaging of one class of property in violation of the terms of the policy will not prevent a recovery as to all other classes upon which no incumbrance existed. The rule was announced in the case of Insurance Co. v. Schreck, 27 Neb. 527, 43 N. W. Rep. 340, 6 L. R. A. 524, and has since been followed. In that case the insurance was upon certain buildings on a farm, and also covered a lot of personal property described in the policy. The policy provided that 'any other insurance or any incumbrance upon any of the property hereby insured existing at the date of this policy, not made known in the application, or if any subsequent incumbrance is imposed, * * * this policy shall be void.' A mortgage was placed upon the real estate on which the insured buildings were located in violation of the terms of the incumbrance clause, and it was held that the policy of insurance was separable and divisible, and that an incumbrance upon the real estate, while preventing a recovery for the loss sustained by the burning of the buildings, would not preclude a recovery for the loss of the personal property insured. While the rule announced in our court is apparently in conflict with the views of the other courts on the same subject herein referred to, the divergence of opinion is not as marked as first appearances would indicate. Each has a different basic point for the course of reason adopted. In this court the policy as to different classes of property insured for specific sums is held to be divisible and a separate contract as to each class of property insured, in so far as the clause against insurance shall apply, while the other cases undertake to analyze and define the meaning, force and effect of the words employed in the provisions against incumbrance. While neither are controlling of the provisions under consideration, they are useful in so far as they may may aid us in a correct solution of the question herein involved.

"Recurring to the language of the warranty

in the case at bar, it is provided that, if the conditions are not performed, the policy shall be forfeited. There are two separate and distinct acts to be done; one is to keep books of account, and the other is to take an inventory at a certain time. To accomplish the object sought, it also provided that the books while being kept, and the inventory when taken, are to be kept in a fireproof safe, or other place secure from fire, in the store building containing the property insured. These different steps to be taken are all more or less important, if valuable at all. The inventory, it would seem, is regarded as important as any other act required; and, until there has been a default or breach in that condition, who is at liberty to say, under the wording of the penalty, that a forfeiture of all rights under the policy was the deliberate contract of the parties to be enforced by the courts upon application therefor? The answer is rendered less difficult when there is kept in view the rules for the proper construction of provisions of this character, as heretofore announced in this opinion. It is not said by the words used, or the fair import of the same, that if one condition is not complied with a forfeiture will ensue, but the plural is used and clearly refers to all the conditions preceding, and not to any particular one of them."

GARNISHMENT — NON-RESIDENT PARTIES.—It was decided by the Supreme Court of Minnesota, in McKinney v. Mills, that where all of the parties to an action brought in this State—the plaintiff, the defendant, and the garnishee—are non-residents, none of them being within the State except the garnishee, who is served with a summons while he is within our borders temporarily upon business, the garnishee process must be discharged whenever the facts are brought to the attention of the court. The court says:

"The plaintiff herein, the defendant, and the garnishee, were each and all domiciled in the State of North Dakota when plaintiff instituted the main action in a court of this State and caused the garnishee summons to be served upon the garnishee, who was at the time in this State temporarily upon business, and was the only party within our jurisdiction. The indebtedness of the garnishee to the defendant arose in North Dakota and was payable there. It never had a *situs* in the State of Minnesota, unless it was brought within our borders by the garnishee just prior to the service of the summons upon him. The first question for determination is, did the service of the summons attach and seize the debt which was due and owing from the garnishee to the defendant, both parties being actual residents of another State, and the latter being domiciled without the jurisdiction of the court in which the proceedings were pending? Tested by the rule announced in Harvey v. Railway Co., 50 Minn. 405, 52 N. W. Rep. 905, 17 L. R. A. 84, this question would have to be answered in the affirmative. It was there said, *obiter:* 'For the purpose of attachment, a debt has a *situs* wherever the debtor can be found. Wherever the creditor might sue for its recovery, there it might be attached as his property, provided the laws of the forum authorized it. Neither is it material that a debt was not made payable in the State where the attachment proceedings are instituted.' And it is very evident that the trial court, when making the order appealed from, acted on this rule and was governed by it. But, on the real facts in the Harvey case it was unnecessary for the court to make a general statement of the law, and in the later case of Bank v. Bleecker, 72 Minn. 383, 75 N. W. Rep. 740, 42 L. R. A. 283, these facts were clearly set forth for the purpose of pointing out the difference between the two cases, and to demonstrate that, independent of what was said, as above quoted, the Harvey case was rightly decided. The distinction was that in the latter case the garnishee was a railway corporation doing business in Montana, where the garnishee proceedings were commenced. The debt garnished grew out of a Montana transaction, and was incurred in that State when Zeller, the main debtor, was domiciled therein. As was said in the opinion, the garnishee had a domicile in Montana for the purposes of that transaction, and the fact that Zeller subsequently left the State did not destroy this domicile, or the *situs* of the debt for the purposes of attachment in Montana. In the later case, Bank v. Bleecker, the contention was that the garnishee, a foreign corporation doing business in several different States, including Minnesota, was, for the purposes of attaching a debt due from it to the defendant, a non-resident domiciled in Minnesota, and hence subject to our garnishee laws. The court did not agree to this. The whole matter was summed up in the following paragraph in the opinion: 'Neither the creditor nor the debtor resided in this State. None of the transactions out of which the indebtedness arose took place in this State, and the indebtedness was not payable in this State. Under these circumstances the debt has not a *situs* in this State'—a large number of cases being cited. There were also three well considered cases cited upon the proposition that 'a debtor who is only temporarily in the State cannot be charged as a trustee or garnishee.' It is stated in 14 Am. & Eng. Enc. Law (2d Ed.), 801, that 'the decisions on the question as to the liability to garnishment of debts owing to the defendant, as affected by the *situs* of the debt, are in irreconcilable conflict, arising from the different views of the courts as to the *situs* of the debt which constitutes the *res*, and over which the court must be able to acquire jurisdiction, where personal service is not had upon the defendant. Where the court has acquired jurisdiction over the garnishee, and also over the defendant, by personal service, it would seem that there is no reason for exempting from liability to condem-

nation in such proceedings, on account of its constructive *situs*, any debt owing to the defendant.' And, further, 'that the general rule as to the *situs* of a debt, for various purposes, at the residence of the creditor, does not apply in case of garnishment proceedings;' convincing illustrations being found in a large number of cases cited in support of this rule. And also: 'A convincing illustration of the doctrine that the *situs* of a debt is not necessarily fixed by the residence of the creditor is shown by the cases, which universally hold that a debt due from a resident debtor to a non-resident creditor may be subjected by garnishment proceedings to the payment of claims against such creditor, though service upon such creditor is by publication only.' And it is very frankly said in note 5 that the best doctrine seems to be that debts have no fixed *situs* as regards garnishment proceedings. It is not necessary for us to determine whether or not this is the best doctrine, but an examination of the adjudicated cases will convince one that, in an effort to determine the question by reference to the general rule as to the *situs* of the debt, the courts have involved the question in inextricable confusion. As was said by Mr. Freeman in his annotation to Bank v. Furtick (Del. Err. & App.), 69 Am. St. Rep. 99, 42 Atl. Rep. 479, at page 116: 'The courts confound the *situs* of a debt for the purpose of jurisdiction of it in garnishment proceedings with its *situs* for the purpose of determining the rights of the parties concerning it. They lose sight of the debt as an entity having but one *situs*, as the personal property of him to whom it is owing.' This annotation is very complete and valuable, covering, as it does, a large number of decisions. The drift of the decisions in cases where the debt is due to a non-resident from a non-resident is well stated in 14 Am. & Eng. Enc. Law, p. 803, in the following language: 'Where personal jurisdiction cannot be acquired over the defendant on account of his being a non-resident, the decisions upon the question whether a debt due to him by a non-resident may be reached by garnishment proceedings, when service is had upon the latter while within the State within which the garnishment proceedings are brought, are in direct conflict, arising, as heretofore said, from the attempt to give to an indebtedness a *situs*, and the principle that, where personal jurisdiction is not acquired over the defendant, jurisdiction must be acquired over the *res*.' The authorities collected in note 2 sustain the text, but the opposite is not without support. See note 3. In 2 Shinn, Attach., § 491, the author says that it is well settled 'in this country that an inhabitant in another State is not chargeable as a garnishee, although he is within the jurisdiction of the court, where he has come for temporary purpose, and the process of garnishment is therein regularly served upon him. Such a person, served with process of garnishment, will be discharged whenever the fact is brought to the attention of the court.' The cases cited by the author are all well considered, and are in full accord with the statement.

"From our examination of the cases mentioned in these books, we do not feel warranted in attempting to lay down any rule except in respect to the particular case in question. As before intimated, the doctrine in the Harvey case is too broad, and is not well fortified by adjudications. The court below may have been justified in relying upon it, but it is the plain duty of this court to modify the sweeping assertion therein contained, and we do so by holding that when all of the parties to an action brought in this State—the plaintiff, the defendant, and the garnishee—are non-residents, none of them being in the State except the garnishee, who is served with summons while he is in our borders temporarily upon business, the garnishment process must be discharged whenever the facts are brought to the attention of the court. We are of the opinion that the authorities are practically agreed upon this proposition as the only one which will adequately protect non-residents from being twice compelled to pay their debts."

LIFE OF A JUDGMENT OF A FEDERAL COURT IN FAVOR OF THE UNITED STATES.

The question arises whether a State statute of limitations may be availed of as a defense to any proceeding to enforce or collect a judgment in favor of the United States recovered in a federal court. The general rule of the common law is that where a statute is general, and thereby any right, title, prerogative or interest is devested or taken from the sovereign, he is not bound unless the statute is made to extend to him by express words.[1] So far as State statutes of limitation are concerned it is unnecessary to inquire whether the United States be or be not expressly included within their application. The United States, whether named in a State statute of limitations or not, are not bound thereby, and when they sue in their own courts such a statute is not within the provisions of the Judiciary Act of 1789, which declares that the laws of the State, in trials at common law, shall be regarded as rules of decision in the courts of the United States in cases where they apply.[2] It is only material to inquire whether the United States have, by any legislation of their own, recognized the statutes

[1] United States v. Herron, 20 Wall. 251; Angell on Lim. (5th Ed.) p. 32; Wood on Lim. § 52.

[2] United States v. Thompson, 98 U. S. 486.

of limitation in the several States as a bar to the enforcement of judgments recovered by themselves in their own courts.

The only legislation of congress in any degree relating to this subject is found in section 967 of the Revised Statutes of the United States, and in the act of congress August 1, 1888.[3] The former provides as follows: "Sec. 967. Judgments and decrees rendered in a circuit or district court, within any State, shall cease to be liens on real estate, or chattels real, in the same manner and at like periods as judgments and decrees of the courts of such State cease, by law, to be liens thereon." The act of 1888 provides as follows: "That judgments and decrees rendered in a circuit or district court of the United States, within any State, shall be liens on property throughout such State, in the same manner and to the same extent, and under the same conditions only, as if such judgments and decrees had been rendered by a court of general jurisdiction of such State." The plain effect of these statutes is to make judgments recovered by individuals in federal courts subject to the bar of the statute of limitations of the States in which the judgments are recovered. But neither of them contains any language, whatever, showing an intent on the part of congress to bring judgments recovered by the United States in federal courts within the application of State statutes of limitation. Their broad terms, however, would include judgments in favor of the United States, unless they are to be restrained by the rule of the common law that the sovereign is not to be devested of a property right by any statute in which he is not expressly named. This rule has been repeatedly recognized and enforced by the Supreme Court of the United States In the case of United States v. Nashville, etc. R. R. Co.,[4] they said: "It is settled beyond doubt or controversy upon the foundation of the great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided; that the United States, asserting rights vested in them as a sovereign government, are not bound by any statute of limitation, unless congress has clearly manifested its intention that they should be so bound." And in the case of Savings Bank v. United States[5] the same court, by Strong, J., said: "It is a familiar principle that the king is not bound by any act of parliament unless he be named therein by special and particular words. * * * The rule thus settled respecting the British crown is equally applicable to this government, and it has been frequently applied in the different States, and practically in the federal courts. It may be considered settled that so much of the royal prerogatives as belonged to the king in his capacity of *pariens patriæ*, or universal trustee, enters as much into our political state as it does into the principles of the British constitution."

The rule and its exceptions were fully examined by Judge Nott in the case of Jones v. United States.[6] He says that the rule has not been departed from to this day, and that he has been unable to discover any case in the American or English courts which does not fall within one of the four exceptions to the rule which he names as follows: "Acts for the advancement of religion; acts providing for the poor; acts for the prevention of wrong; and such inferior claims as might belong indifferently to the king or to the subject." It is obvious that the case of the application of a general statute of limitations to a claim of the United States does not fall within any of these exceptions. The question under consideration by the court was whether a claimant could testify in his own behalf in the court of claims, in view of the act of congress which provides that "in courts of the United States there shall be no exclusion of any witness because he is a party to the issue tried." It was held that the claimant could not testify because the act did not by special and particular words apply to suits by or against the United States. I have been able, after careful search, to find but one case in which the precise question under consideration was presented. It was held in the case of United States v. Spiel[7] that a judgment of a federal court in favor of the United States might be enforced, though barred by the statute of

[3] 25 Stat. 357; 1 Supp. Rev. Stat. 602.
[4] 118 U. S. 120.
[5] 19 Wall. 227.
[6] 1 Court of Claim's Rep. 389.
[7] 8 Fed. Rep. 143.

limitations of the State in which it was recovered. No authorities were cited and no reference was made by the court to section 967 of the Revised Statutes nor to the act of 1888. In the case of United States v. Houston[8] it was held that a statute of Kansas limiting the time within which a judgment must be revived against the personal representative of a deceased judgment debtor did not bind the United States. It was expressly held by the court (p. 210) that remedies for the enforcement of a judgment in favor of the United States could not be cut off or denied by lapse of time or by positive legislative enactment of the State, and neither the act of 1888 nor sec. 967 of the Revised Statutes was referred to. It was said, however, by the court: "While a judgment in favor of the United States rendered in this court would cease to be a lien on property in the State within the same period prescribed by the statute as to such liens in general, it is by reason of positive enactment by congress."

The "positive enactment," here referred to, is not given, but it is supposed that the court had in mind section 967 of the Revised Statutes. That statute does not provide that a judgment in favor of the United States shall cease to be a lien at the same time as other judgments, and there is no other statute which so provides. The language of the court was not only a *dictum*, the point not being necessarily involved in the decision, but cannot be easily reconciled with the subsequent declaration of the court that remedies for the enforcement of a judgment in favor of the United States in their own courts are not to be cut off or barred by State legislation.

The following decisions, while not directly in point, furnish analogies which support the view that section 967 of the Revised Statutes does not embrace judgments recovered by the United States. The Bankruptcy Act of 1867, providing that a discharge in bankruptcy shall release the bankrupt from all his debts, etc., does not embrace debts due the United States. No general words in a statute devest the government of its rights or remedies.[8a] The United States, whether named in a State statute of limitations or not, are not bound thereby.[9] A suit by the United States to repeal a patent for public lands improperly issued is not barred by any statute of limitation, nor by laches.[10] State statutes of limitation do not apply to the State itself, nor to the United States, unless they are specially designated or the mischiefs to be remedied are of such a nature that they must necessarily be included.[11] The defense of laches cannot be set up in a suit by the United States to redeem land sold under a mortgage.[12] The defense of laches cannot be set up in any case against the government.[13] There is no presumption of payment against the United States arising from lapse of time.[14]

In the following cases the United States were held to be bound by statutes in which they were not specially named: Fink v. O'Neil,[15] where it was held, under Rev. Stat. U. S. § 916, which gives the plaintiff in federal judgments the same remedies by way of execution as are provided in like cases by the laws of the State, that the State exemption laws applied to executions issued upon judgments of a federal court in favor of the United States. Green v. United States,[16] where it was held that the act of July 2, 1864, which allowes parties in interest to testify, applies to civil actions to which the United States are parties. United States v. McKnight,[17] in which case it was held that the act of May 19, 1828, giving debtors imprisoned under executions from federal courts the privilege of jail limits under State laws includes cases in which the United States are plaintiffs. It is certainly not easy to reconcile the decision in Fink v. O'Neil,[18] with the rule that the United States are not to be deprived of a right or interest by a statute in which they

[8] 48 Fed. Rep. 207.

[8a] United States v. Herron, 20 Wall. 251.

[9] United States v. Hoar, 2 Mason, 311; United States v. Williams, 5 McLean, 133; United States v. Thompson, 98 U. S. 486.

[10] United States v. South. Pac. Ry. Co., 39 Fed. Rep. 132.

[11] Gibson v. Chouteau, 13 Wall. 92; People v. Gilbert, 18 Johns. (N. Y.) 228.

[12] United States v. Insley, 130 U. S. 263.

[13] United States v. Kilpatrick, 9 Wheat. 720; United States v. Van Zandt, 11 Wheat. 184; United States v. Dallas Military Road, 140 U. S. 599.

[14] United States v. Williams, 5 McLean, 133.

[15] 106 U. S. 272.

[16] 9 Wall. 655.

[17] 14 Pet. 301.

[18] *Supra*.

are not expressly named. There is a plain distinction between that case and the two cases, Green v. United States and United States v. McKnight, upon the authority of which the decision was chiefly rested. The two statutes in the latter cases merely laid down rules of procedure in civil actions, and did not necessarily operate to deprive the United States of a right, title, or interest, at least they did not operate to deprive them of property itself, as the decision in Fink v. O'Neil substantially does by removing the property of their debtor beyond their reach.

So far as the personal property of the judgment debtor of the United States is concerned, it is plain that the life of the judgment is unaffected by any State statute of limitations, for section 967 of the Revised Statutes refers in terms only to the lien of a judgment on real property or chattels real; and the act of 1888 refers only to the "liens of judgments or decrees on property," an expression which does not include personal property, since a mere judgment or decree, of itself, does not constitute a lien on personal property. Recurring now to the language of Mr. Justice Gray in United States v. Nashville, etc. Ry. Co.,[19] that the United States "are not bound by any statute of limitations unless congress has clearly manifested its intention that they should be so bound," can it be said that congress in declaring that the judgments of federal courts shall cease to be liens on real property or chattels real at the same period as judgments of the State courts ceased to be liens thereon "clearly manifested its intention" that the State statute of limitations should operate to bar their lien upon the real property of the debtor? There is not a word in the statute which expressly or impliedly refers to the United States, as there was in the act of July 2, 1864, construed in Green v. United States,[20] where the court laid hold of the word "civil" in the phrase "there shall be no exclusion of witnesses in civil actions" because of interest, as indicating an intent on the part of congress that the act should apply to cases in which the government is a party, for there would have been no occasion to have used the words "civil actions" in the act if there had not been an intent to except the United States from the universality of the law, and fix a class of cases wherein they were parties, to which the act would not apply, namely, criminal cases.

If it was the intent of congress that a judgment of a federal court in favor of the United States should be barred by State statutes of limitation, how is it possible to explain the restriction of the operation of section 967 of the Revised Statutes and of the act of 1888 to judgments as liens on real estate. Why should the judgment be alive as to personalty and dead as to realty? It is impossible to resist the conclusion that the two statutes in question were enacted for the sole purpose of protecting purchasers of real property by putting the judgments of federal courts upon the same footing as the judgments of the State courts with respect to their liens, in order to avoid the insecurity and uncertainty of titles that would result from conflicting systems of law upon so vital a subject, and that there was no intention on the part of congress to subject the judgments of federal courts in favor of the United States to the bar of State statutes of limitation.

CHAPMAN W. MAUPIN.

Washington, D. C.

[19] 118 U. S. 120.
[20] *Supra.*

TRUSTEES—UNAUTHORIZED INVESTMENT OF TRUST FUNDS.

In the matter of ALBERT C. HALL and THOMAS G. RITCH.

New York Court of Appeals, October 2, 1900.

A testator, whose estate consisted in part of his interest in a business for the manufacture and sale of umbrellas, devised and bequeathed property to his executors in trust for his children for life, the remainder to his grandchildren, who were infants. The will authorized and empowered the executors to sell or convey any part of his estate and to reinvest the proceeds of such sales "in any security, real or personal, which they may deem for the benefit of my estate and calculated to carry out the intention of this, my will." The will further directed the trustees to close out and sell his interest in his umbrella business within six months after his death. The trustees invested $25,000 of the estate in the preferred stock of a corporation organized to conduct the manufacture and sale of umbrellas, and formed by the consolidation of several firms at the time engaged in that business. The corporation had no real estate or plant; the preferred or debenture stock was issued for merchandise, fixtures and book accounts of the firms. The enterprise was unsuccessful, and within a short time after its incorporation the corporation went into

hands of a receiver, with a consequent loss on the investment. Held, that the enterprise was speculative and hazardous, and that, although the trustees were given a discretion as to the character of their investments and were not limited to the general investments prescribed by law, the authority in the will did not justify the investment in question, although the trustees acted in good faith in making it.

It seems that, under the authority contained in the will, had the trustees invested in the stock of a railroad, manufacturing, banking, or even business corporation, which by its successful conduct for a long period of time had achieved a standing in commercial circles and acquired the confidence of investors, their conduct would have been justified, although the investment proved unfortunate.

CULLEN, J.: The question in the case is as to the liability of the appellants as trustees for an investment of $25,000 in the debenture stock of "The Umbrella Company." The authority given the appellants by the will is: "I hereby give my said executors and trustees hereinbefore named full power to reinvest the proceeds of such sale, or other act as aforesaid, in any security, real or personal, which they may deem for the benefit of my estate and calculated to carry out the intention of this, my last will." The testator himself had been in the umbrella business, and by the sixth clause of his will he directed that his interest in the business be closed on the 1st day of July or the 1st day of January immediately following his decease. The referee acquitted the appellants of any bad faith, but held them liable on the ground that the character of the investment was illegal. This report was confirmed by the surrogate, and the surrogate's decree, unanimously affirmed by the appellate division which, while it held that under the will the trustees were not limited to what might be called ordinary trust investments, was of opinion that the investment was speculative and hazardous, and, therefore, improper. With this view we agree. As there was unanimous affirmance below, unless we are prepared to decide that good faith exonerates the trustees from liability, no matter how speculative, hazardous or unwise the investment may have been, we must affirm the judgment, and cannot look into the evidence to see how speculative or unreasonable the investment was.

The investment in the case at bar was in the preferred stock of a corporation organized to conduct the manufacture and sale of umbrellas, and formed by the consolidation of several firms at the time engaged in that business. The corporation had no real estate or plant. The preferred or debenture stock was issued for merchandise, fixtures and book accounts of the firms, while the common stock was issued for the supposed good will of those firms. While the money was not paid on an original subscription of stock, but the stock was bought from a holder, still it was during the very first days of the existence of the company and before experience had shown that it could achieve any success or stability. After doing business for a short time the corporation failed and two-thirds of the investment of $25,000 was lost. One of the firms from the consolidation of which the corporation sprang was that of the appellant, Hall, in which firm the testator at the time of his decease was a partner. As pointed out in the opinion delivered by Justice Bartlett in the appellate division, the testator certainly never intended that the money he had directed to be withdrawn from the business should be invested in the same business.

We concede that under the terms of the will the trustees were given a discretion as to the character of the investments they might make, and that they were not limited to the investments required by a court of equity in the absence of any directions from a testator. The trusts of this will are to provide the testator's children with incomes during their lives, and on their deaths the principal is to go to their issue. The very object of the creation of the trust was, therefore, the security of the principal; otherwise the testator might better have given the property outright to his children, who were the primary objects of his bounty. The range of so-called "legal securities" for the investment of trust funds is so narrow in this State that a testator may well be disposed to grant to his executors or trustees greater liberty in placing the funds of the estate. But such a discretion, in the absence of words in the will giving greater authority, should not be held to authorize investment of the fund in new speculative or hazardous ventures. If the trustees had invested in the stock of a railroad, manufacturing, banking, or even business corporation, which, by its successful conduct for a long period of time, had achieved a standing in commercial circles and acquired the confidence of investors, their conduct would have been justified, although the investment proved unfortunate. But the distinction between such an investment and the one before us is very marked. Surely there is a mean between a government bond and the stock of an Alaska gold mine, and the fact that a trustee is not limited to the one does not authorize him to invest in the other.

In our judgment, the authority given to the appellants by this will is quite similar to that vested in trustees in many New England States, where the strict English rule as to the investment of trust securities which prevails in this State does not obtain. In Mattocks v. Moulton, 84 Me. 545, it was held that in the investment of trust funds the trustee must exercise sound discretion, as well as good faith and honest judgment. The court said: "It will be generally conceded that a mere business chance or prospect, however promising, is not a proper place for trust funds. While, of course, all investments, however carefully made, are more or less liable to depreciate and become worthless, experience has shown that certain classes of investments are peculiarly liable to such depreciation and loss. These, of course, would be avoided by every prudent man who is investing his own money with a view to

permanency and security rather than chance of profit. A trustee should, therefore, avoid them, even though he sincerely believes a particular investment of that class to be safe as well as profitable." In Dickinson, appellant, 152 Mass. 184, a trustee was held liable for an investment in Union Pacific railroad stock. It was there said: "Our cases, however, show that trustees in this commonwealth are permitted to invest portions of trust funds in dividend paying stocks and interest bearing bonds of private business corporations, when the corporations have acquired, by reason of the amount of their property, and the prudent management of their affairs, such a reputation that cautious and intelligent persons commonly invest their own money in such stocks and bonds as permanent investments."

Several of the equitable life tenants consented to the investment made by the trustees and are estopped from questioning its propriety. The courts below have so held and have authorized the trustees to retain the shares of such life tenants in the income produced by the sum which the appellants have been directed to pay into the fund on account of the loss on the securities. The decree, however, does not go far enough in this respect, for in certain contingencies these life tenants may be entitled to share in the principal of the fund. The decree should be modified so as to provide that in case any beneficiary, who has assented to the investment in the umbrella stock, should become entitled to any part of the principal of the fund paid by the trustees, then the trustees may retain such part, and as so modified affirmed, without costs of this appeal to any party.

O'BRIEN, BARTLETT, HAIGHT and LANDON, JJ., concur; PARKER, Ch. J., and VANN, J., dissent.

Judgment accordingly.

NOTE.—*Recent Cases on Investments by Trustees.*—Where property is devised to a trustee to pay the income to a person for life, with remainder to the children of the life tenant, the court cannot require the trustee to invest part of the *corpus* of the estate in household furniture and stock for the use of the life tenant, the remainder-men not being before the court. Stouffer v. Clagett (Md.), 32 Atl. Rep. 284. A mere fact that the trustee of a fund consisting of certain bonds fails to sell them at the request of the husband of the beneficiary, although they were paying no interest, is not sufficient to charge him with liability for their depreciation in value. Johns v. Herber, 2 App. D. C. 485. That a trustee is not authorized by the terms of a trust to change the investment at discretion will not relieve him from the duty to watch the investment with reasonable care and diligence, and to apply promptly to the court for leave to change it whenever he deems it necessary, to preserve the fund. Johns v. Herbert, 2 App. D. C. 485. The trustee of a minor child cannot convey land of the trust estate to a land company, formed for speculative purposes, and receive as the price stock of the company. Randolph v. East Birmingham Land Co. (Ala.), 16 South. Rep. 126. A testator set apart a reserve fund to be retained by trustees to guard against losses by shrinkage in the value of his real estate, or other contingencies, and to be invested and reinvested from time to time, until the termination of the trust. After his death, a corporation, having determined to construct somewhere in St. Louis a large hotel, selected a site opposite to testator's property, which was at the time rapidly depreciating in value, but were unwilling to erect the hotel there unless property owners on that street would subscribe a sufficient amount as a bonus. The trustees, doubting their power to donate from the reserve fund to this enterprise, applied to the court for instructions. Held, that such donation, helping to prevent further decrease in values, would be an "investment," within the meaning of the will. Drake v. Crane (Mo. Sup.), 29 S. W. Rep. 990. Where executors are by the will made trustees of a fund, and directed to place it with one of several companies for investment, they will not be liable on default of the company selected if they exercise due care in selecting it. Pinney v. Newton, 66 Conn. 141, 33 Atl. Rep. 591. One entitled to the use of a fund for life, having been appointed trustee, invested the fund in lands, and opened a coal mine. He formed a partnership with another person; but, the venture proving a failure, such partner was compelled to pay the debts of the firm. Held that, the transaction being a perversion of the trust, the reversioners were not liable to the surviving partner for reimbursement of the amount of the firm debts such partner was compelled to pay. Butler v. Butler, 61 Ill. App. 51. Investments in speculative railroad stocks are not within the limit of any correct rule within which equity will require a trustee to keep with reference to the character of securities in which he may make temporary investments of unemployed funds. Sherman v. White, 62 Ill. App. 271. Where a will creates a trust fund, and leaves the manner of its investment to the discretion of the trustees, the latter will be personally liable for any failure to exercise sound discretion and good faith. Caspari v. Cutcheon (Mich.), 67 N. W. Rep. 1093. Where one of two trustees has funds of the trust estate in his possession, and, with the consent of his co-trustees, invests them in mortgages taken in his own name, such mortgages, as between the trustee making the instrument and the trust estate, are the property of the latter. Roosevelt v. Land & River Imp. Co. (Sup.), 38 N. Y. S. 242, 3 App. Div. 563. Where a trust deed provides that the trustees "will invest the same, and keep the same invested, in their discretion," and pay the income to certain beneficiaries named, the purchase by the trustees of lands, opening a coal mine thereon and mining operations, were a perversion of the trust. Butler v. Butler, 164 Ill. 171, 45 N. E. Rep. 426. A testamentary trustee, who was also executor and a residuary legatee, sold property as executor for $3,500, on credit, taking as trustee, a mortgage on other property, and held such mortgages as an investment for the trust fund. He had previously tried to sell the property at that price, but failed. The trustee had no knowledge of the value of the property on which the second mortgage was taken except what the mortgagor told him. He consulted his solicitor as to the investment, but did not know whether the solicitor had ever seen the property. The entire mortgaged property was not worth more than $400 above the incumbrances, and on foreclosure there was a loss of about $1,400. Held, that the trustee was liable for the loss. Gilbert v. Kolb (Md.), 37 Atl. Rep. 423. A testamentary trustee empowered to in-

vest the trust funds in some safe security, with power to reinvest, is not liable for loss if he acts in good faith and with diligence, and in a way that a court of equity would have approved under the circumstances as the trustee honestly believed them to be. Gilbert v. Kolb (Md.), 37 Atl. Rep. 423. A trustee directed by the court to secure the trust fund, when he invested it, by taking a mortgage of land, loaned the fund, and secured the debt by having the borrowers confess judgment, and directed the clerk not to place the execution which issued thereon in the sheriff's hands until further orders, thus limiting the lien of the judgment to ten years. Three years afterwards the court removed him, and directed him to turn the fund over to its general receiver, which he did. The trustee's account, which showed how such loan was secured, was regularly settled and confirmed, and all investments mentioned therein were approved. The fund was lost solely by allowing the judgment to become barred by limitations seven years after the trustee was removed. Held, that the general receiver, and not the trustee, was liable for the loss of the fund, since, under Code 1873, p. 1167, sec. 12, the execution issued authorized other executions to be issued at any time within ten years from its return day, without the necessity of a *scire facias*, so that the lien could have been kept alive as long as necessary; and this, though it was the trustee's duty to have an execution issued, and such a return made on it as would have continued it in force for twenty years under such statute. Rush's Exr. v. Steele, 93 Va. 526, 25 S. E. Rep. 604. A power to trustees to invest in such securities as they "think fit" means as they "honestly think fit." *In re* Smith (1896), 1 Ch. 71. Trustees who retain mortgages on real property created by their testator, and authorized as investments by the terms of his will, will not be held liable for loss occasioned by the depreciation in value of land, where they have acted with reasonable care, prudence, and circumspection. *In re* Chapman (1896), 2 Ch. 763. A trustee having power under the deed creating the trust to loan the trust fund, and to support the beneficiary therefrom, is not liable for the loss of a loan to secure which he accepted collateral in good faith, and on the advice of the husband of a remainder man. Colloway v. Colloway (Ky.), 39 S. W. Rep. 241. A trustee, without express authorization, cannot invest the funds in speculative railroad stocks, without personal liability. White v. Sherman, 168 Ill. 589, 48 N. E. Rep. 128. A trustee who has converted trust funds to his own use, by investing them in his own name, may be held for the conversion, the investment proving unprofitable; and it is not a sufficient excuse for purchasing in his own name that he might want to sell without the delay of an application to the court. White v. Sherman, 168 Ill. 589, 48 N. E. Rep. 128. A trustee who, on stating to the beneficiaries the difficulty of lending money on short time, and suggesting the buying of railroad stock, is told by them to use his own judgment in regard to the matter, is not thereby authorized to invest in such stocks. White v. Sherman, 168 Ill. 589, 48 N. E. Rep. 128. Under Ky. St. sec. 4706, which authorizes persons holding trust funds to invest the same in such real estate as would be regarded as a safe investment, a trustee of funds under a will directing it to be invested in good securities as a permanent fund, the interest to be paid to the support of the pastor of a church, may be directed to invest a portion of the fund in a parsonage building, on request of the trustees and members of the church, upon proof that the change would be prudent, beneficial, and profitable. Stone v. Clay (Ky.), 45 S. W. Rep. 80. A testator created by will a trust to invest $6,000 upon bond and mortgage on real property, with power in the trustee to control and manage; the trust to continue during the respective minorities of two infants, one of whom would not come of age for 15 years. Held, that the trustee was not required to keep the fund invested in given mortgages, payable only at the end of so long a term, and hence that he had power to change and vary the investment. Spencer v. Weber, 49 N. Y. S. 687, 26 App. Div. 285. Trustees are not liable for losses resulting from the depreciation of authorized investments made in good faith, where they use all ordinary care in determining on the investment. *In re* Bartol, 182 Pa. St. 407, 38 Atl. Rep. 527. A will provided that the executors and trustees might, if they deemed it for the benefit of the estate, retain in their hands, as assets, any investments which "I may have and possess at the time of my death," without liability in case of depreciation or loss, etc. Held, that the trustees were not accountable for depreciation of shares of stock in a corporation, owned by testator when he died, held by the trustees as a part of the trust estate, on the ground that they had no power to invest any part of the fund in the stock of a private corporation, or because they had an opportunity, before the depreciation, to sell the stock for its full appraised value. *In re* Bartol, 182 Pa. St. 407, 38 Atl. Rep. 527. Personal representatives of a son who sent money to his mother, without any hint of what he wanted done therewith, can charge her estate, on account thereof, only with the money she received and the interest it earned while under her control; whatever trust existed having grown out of her conduct, and been assumed by her when she decided to keep her son's money separate from her own, and make it earn for him whatever she might have opportunity to make it earn. Beale v. Kline, 183 Pa. St. 149, 41 W. N. C. 263, 38 Atl. Rep. 897. Where one holding as trustee securities owned by another exchanges them for other securities, without authority from the owner, and without the investment of any funds of his own, the owner has his election either to take the substituted securities received by the trustee, or to recover the value of his own securities which were given in exchange. Woodrum v. Washington Nat. Bank (Kan.), 55 Pac. Rep. 333. It is no excuse for a trustee, who assents to an investment of the trust fund which he knows to be unauthorized, that he acted under the advice of counsel. *In re* Westerfield, 53 N. Y. S. 25, 32 App. Div. 324. A trustee is not accountable for compound interest unless required by the terms of the trust to make it, or unless he has speculated with the trust funds, and there is no method of ascertaining the profits. Kane v. Kane's Admr. (Mo.), 48 S. W. Rep. 446.

JETSAM AND FLOTSAM.

OVER REGULATION OF BUSINESS.

The recent address of Hon. Charles F. Manderson, as President of the American Bar Association, has called renewed attention to the subject of over legislation. One of the phases of this abuse is the assumption on the part of legislatures to regulate the transaction of private business, where no legitimate element of police power is involved. The courts, with very substantial unanimity, have annulled such

wanton interferences with the constitutional right of liberty. A recent illustration is furnished by the decision of the Supreme Court of Michigan in Valentine v. Berrien, Circuit Judge (September, 1900, 83 N. W. Rep. 594). It was held that a statute requiring merchants who sell farm produce upon commission to execute a bond in the penal sum of $5,000, conditioned for the faithful performance of their contracts, and to pay a license fee, is unconstitutional. The following extract from the opinion of the court by Grant, J., may be taken as a salutary and typical judicial utterance in condemnation of legislation of such character:

"Acts of this character, when valid, must find a reason for their existence in the police power of the State. The act is not aimed at brokers, in the ordinary meaning of that word. It is not aimed at commission merchants generally. It is aimed solely at commission merchants who engage in the business of selling farm produce for producers upon commission. It provides that such a merchant shall pay a fee and execute a bond, as conditions precedent to doing business. The condition of the bond is the honest and faithful performance of his contracts. The business of buying and selling on commission has existed ever since commerce began. There are and always have been dishonest men engaged in it, as there are and always have been in every other branch of business. There are and always have been dishonest sellers, who will pack their produce in such a manner as to deceive. It would be as reasonable to require the latter to give bond to properly pack their produce. In every such case the common law provides an ample remedy for redress to the injured party for breach of contract. There is no more reason why a commission merchant should pay a license fee and execute a bond to pay his debts and to do his business honestly, than there is that any other merchant should pay a like fee and file a like bond to properly do his business and pay his debts. The business requires no regulation, any more than any other mercantile pursuit. There is nothing in it hostile to the comfort, health, morals, or even convenience of a community. It is carried on by private persons in private buildings, and in a manner no different from that in which the merchants selling hardware or groceries or dry goods carries on his business. The law can find no support in the police power inherent in this State. It is not like the liquor traffic, which, under the decisions of every court, is subject to the police power, because of the injury it does to the health, morals and peace of the community, and may be prohibited altogether. Neither is there anything in it requiring regulation, as do hack drivers, peddlers, keepers of pawnshops and the like. The legislature of this State is not empowered by the constitution to regulate contracts between its citizens who are engaged in legitimate commercial business, or to require any class of persons to pay a fee for the right to carry on business, or to give a bond to perform their contracts which other parties may choose to make with them. The constitution guaranties to citizens the right to engage in lawful business, unhampered by legislative restrictions, where no restrictions are required for the protection of the public.

We are compelled to hold this law void, because (1), it is class legislation, and (2), it is an unjustifiable interference with the right of citizens to carry on legitimate business."—*New York Law Journal.*

BOOK REVIEWS.

THE LAW OF OPERATIONS, PRELIMINARY TO CONSTRUCTION IN ENGINEERING AND ARCHITECTURE.

This book might consistently have been entitled, architectural jurisprudence being the law pertaining to such operations as are required for the determination of *data* and information which should be obtained before a building project is undertaken; comprising preliminary surveys and investigations to determine the boundaries, the areas, the elevation, the quantities, and the other physical conditions and phenomena that exist, and from which the cost, resources, and revenues of the enterprise are estimated; including an estimate of the value of the natural products, forces, and benefits to be appropriated or utilized in the undertaking and determination of the rights and powers to be secured and the duties and obligations which attend the carrying out of the enterprise. Proper attention to these preliminaries which are too frequently overlooked would save much cost and expense in construction of buildings. This book has been rewritten to expound the law incident to engineers, architects and those persons engaged in the promotion, organization, construction and operation of projects usually embraced within the general term of public improvements or of private enterprises of such magnitude as to be of public interest. There has been no other book published covering the same grounds. It is also to a considerable extent a treatise on real property restricted in that regard to such property as is employed in architectural construction. Legal questions constantly present themselves during the construction of buildings. Lawyers who have closely contested cases growing out of or pertaining to construction enterprises of buildings, bridges, etc., will find this treatise of great use. About 3,000 cases are cited. The author is John Cassan Wait, M. C. E., LL. B., assistant corporation counsel to the city of New York, formerly professor of engineering in Harvard University. The book is octavo, contains 700 pages. Published by John Wiley & Sons, New York and London.

LAW AND PRACTICE OF TAXATION IN MISSOURI.

This not a general treatise on taxation. Its purpose seems to be to explain the system of taxation as developed in Missouri. Most of the citations of authorities are from the Supreme Court of Missouri and the Supreme Court of the United States of cases originating in Missouri. A good many important cases involving the subject of taxation have been carried to the Supreme Court of the United States from Missouri, especially those involving the right to levy taxes to pay county bonds issued in aid of railroads or other public improvements. The right of a city to exact compensation for the use of its streets and public places. The latter was illustrated in a recent decision,—St. Louis v. W. U. Tel. Co., 148 U. S. 92. The city of St. Louis by an ordinance exacted the sum of five dollars per annum for each telegraph pole on the streets of the city; this ordinance was held invalid by the United States Circuit Court, on the ground that it was an addition to the tax regularly assessed on the property of the company and was in effect a privilege or license tax for the privilege of carrying on its business in St. Louis and therefore involved an attempted regulation of interstate commerce; but the Supreme Court of the United States held that it was not a privilege or license tax but was in the nature of

a charge for the use of the property belonging to the city and could properly be called a rental; that a tax is a demand of sovereignty; a toll is a demand of proprietorship. The judgment was reversed and the case remanded for trial on the issue of whether the charge of five dollars proposed was reasonable. On retrial in the circuit court on this issue it was held that the charge was unreasonable and excessive. No appeal was taken and no attempt has since been made to impose such a tax or rental from telegraph companies. Probably the removal of the wires to underground removed the occasion for further contest.

Although this book is primarily for use in Missouri yet it will be found almost if not quite as useful to the profession outside of the State, for the reason that most of the questions discussed do arise in any and all the States of the Union. Some of the most important topics treated which may arise and do arise in most of the States are, taxation of banks, income tax, situs of personal property, beer inspection tax, department store tax, held void, taxing of interstate railroad systems, gross earnings, street railroads, property and franchises of express, bridge and telegraph companies, foreign insurance companies, peddlers license, lawyers' license, merchants and manufecturers, inheritance tax, the area or front foot rule. One of the most important subjects discussed by the author is the inability of the tax collector to reach the personal property tax dodger and especially the dodgings of the money-lender. In this regard the parties best able to respond to personal property taxation escape almost entirely. Failure to make assessment returns among the holders of real estate mortgages has come to be so common that it has ceased to be noticed. The chapter on this subject is alone worth the price of the book. The author of this treatise is Frederick N. Judson, of the St. Louis bar, whose opinions upon questions of law may be accepted as authority and upon economic questions entitled to much weight. We have but one fault to find and that is the incompleteness of the index. The book is octavo, bound in buckram, and contains 375 pages. Published by E. W. Stephens, Columbia, Mo.

HUMORS OF THE LAW.

The filing of an information against one O'Connor, in the circuit court of Astoria, Oregon, for the statutory crime of "assault, being armed with a dangerous weapon," on one Johnson, brought to light the very amusing incident of a misunderstanding of a common English word nearly causing the death of one man and a severe sentence for another. It seems that O'Connor and Johnson, both friends, were indulging in a political argument concerning McKinley and Bryan, which caused O'Connor to tell Johnson that he was "too dogmatic in his opinions." Johnson, thinking that he had been called a dog, immediately struck O'Connor, who retaliated by drawing a revolver from his pocket and shooting his assailant. The aim of the defendant not being true, and the weapon poor, Johnson escaped with his life. O'Connor was permitted to enter a plea of guilty of simple assault at the request of the prosecuting witness.

During the course of his recent speech on the Philippines, Spooner, of Wisconsin, held up a paper which he said was a letter written by Gen. Lawton some time before his death.

"Do you know it was written?" asked Pettigrew, of South Dakota, who had previously expressed doubts of the authenticity, and had tried to cast a cloud over it.

"The senator reminds me," said Mr. Spooner, "of a lawyer who was defending a prisoner for murder. The evidence showed that the defendant stood with a revolver when the other man approached and fired it, and when he fired it the man fell dead. On cross examination of a witness who saw it the counsel said to him: 'Did you see this defendant?' 'Yes.' 'Where was he?' 'Well, he stood so-and-so.' 'Did he have a revolver in his hand?' 'Yes.' 'Was it pointed at the deceased?' 'Yes.' 'How far from him was it?' 'Twelve feet.' 'Did he fire it?' 'Yes.' 'Did the deceased drop when he fired it?' 'Yes.' 'Did you go to him?' 'Yes.' 'Was he dead?' 'Yes.' 'Now, sir, I ask you to inform the jury on your oath whether you saw any bullet go out of the barrel of that revolver?' "

Amid the laughter which went round no answering word came from Pettigrew.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Important Decisions and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ADMINISTRATION—Distribution—Probate Court.—Where, in the administration of an estate, there is no embarrassment as to the proper mode of administering the same, the fact that the parties differ simply as to the distribution which shall be made of the residue of the estate after the administration has been completed does not authorize a suit in equity by the administrator to have the probate court instructed as to what distribution should be made.—TOLAND V. EARL, Cal., 61 Pac. Rep. 914.

2. ADMINISTRATION—Executors — Commissions.—An

executor who, under authority given him in the will, discharges a general legacy by the delivery of stocks or bonds, is not entitled to commissions under section 3184 of the Civil Code, which provides that an executor shall have a commission "on all sums of money received by him on account of the estate," and "on all sums paid out by him, either to debts, legacies, or distributees."—WALTON v. GAIRDNER, Ga., 36 S. E. Rep. 666.

3. ADVANCEMENTS—Equitable Lien.—Equity will not assume jurisdiction of a suit to impress an equitable lien for advancements on the undistributed shares of certain heirs of an intestate in lands admeasured as dower, which have reverted to the estate, and lands conveyed to all the heirs, as tenants in common, by another heir, to whom advancements were made, since, under Hill's Ann. Laws, §§ 3104, 3105, requiring such an advancement to be brought into hotchpot, and providing that, if it exceed the distributive share of the heir to whom advanced, he shall be excluded from further portion, though not required to refund, but if less he shall be entitled to the balance, suit in partition is the only remedy.—BELLE v. BROWN, Oreg., 61 Pac. Rep. 1024.

4. APPEAL—Notice—Service.—Under Code Civ. Proc. § 1012, providing that service of notice of appeal may be made by mail, where the person making the service and the person on whom it is to be made reside or have their offices in different places, an affidavit of service of notice of appeal by mail, which fails to show that the person serving it and the person on whom it was served resided in different places, is fatally defective.—LISFORTH v. WHITE, Cal., 61 Pac. Rep. 910.

5. ARBITRATION AND AWARD — Building Contracts.—Where the terms of a building contract called for a gross sum for all the work to be performed thereunder, for the submission of differences to the arbitration of designated persons, and that payment for extra work should be governed by the contract price, it was proper for the arbitrators to determine the value of such extra work by the current market price thereof.—ROUNDS v. AIKEN MFG. CO., S. Car., 36 S. E. Rep. 714.

6. ASSOCIATIONS — Moneys Paid Directors.—A member of an association cannot recover against those who acted as its directors, for moneys voluntarily paid in by him with full knowledge of the disposition required thereof by its by-laws, and paid out by them in conformity thereto, because of lack of authority to receive and disburse the same, due to failure to incorporate, though such directors discontinued the business without sufficient cause.—MEYER v. BISHOP, Cal., 61 Pac. Rep. 919.

7. ATTACHMENT—Fraud of Creditors—Evidence.—On trial of an attachment on the ground that defendant was about to fraudulently sell and dispose of his property, it was not error to exclude testimony of another as to unauthorized statements of the defendant's son, while keeping his store during his absence, as to his whereabouts and desire to sell out, and that things could be gotton cheap, since such statements were mere hearsay, not binding on defendant.—MILWAUKEE HARVESTER CO. v. TYMICH, Ark., 58 S. W. Rep. 252.

8. ATTACHMENT — Fraudulent Disposition of Property.—In the absence of a showing that plaintiff was insolvent, the mere fact that she had executed a mortgage on the stock of goods in her store, in which it was provided that goods subsequently purchased by her to replenish the stock should also be subject to the mortgage, and that she had used the money from current sales for the support and sustenance of herself and family, and in payment of the expense of conducting a farm, did not show a fraudulent disposition of her property, such as would permit defendant to attach the same to secure payment of his debt.—COX v. BIRMINGHAM DRY-GOODS CO., Ala., 28 South. Rep. 456.

9. ATTORNEY AND CLIENT—Loan by Attorney to Client—Champertous Contract.—It is not against public policy for an attorney to loan his client money with which to pay costs of suit, nor to advance the money necessary to carry on the suit, as needed, when such advances are made as a loan, with the express understanding or agreement for its repayment, and there is no contract of indemnity against the client's liability to pay costs.—POTTER v. AJAX MIN. CO., Utah, 61 Pac. Rep. 999.

10. BANKRUPTCY — Bankrupt's Membership in Stock Exchange.—A seat or membership owned by a bankrupt in a stock exchange is property and passes to his trustee in bankruptcy, and may be sold by the latter as an asset of the bankrupt's estate.—IN RE PAGE, U. S. D. C., E. D. (Penn.), 102 Fed. Rep. 746.

11. BANKRUPTCY—Corporations—Act of Insolvency.—A petition of involuntary bankruptcy against a corporation, which is based upon a confession of insolvency and the willingness of the corporation to be adjudged a bankrupt, will not be construed as in effect voluntary, and therefore within the exception which excludes corporations from the benefit of voluntary bankruptcy.—IN RE T. L. KELLY DRY-GOODS CO., U. S. D. C., E. D. (Wis.), 102 Fed. Rep. 747.

12. BANKRUPTCY—Discharge.—An order refusing to discharge a bankrupt under the bankruptcy act of 1867 does not estop the bankrupt from applying for a discharge upon the same facts, and as to the same debt, under the act of 1898.—IN RE HERRMAN, U. S. D. C., S. D. (N. Y.), 102 Fed. Rep. 753.

13. BANKRUPTCY—Discharge of Bankrupt—Opposition.—Under Bankr. Act 1898, § 14b, providing that upon an application for a discharge the judge shall hear such proofs and pleas as may be made in opposition thereto, and discharge the applicant, unless he has committed an offense punishable by imprisonment as provided in said act, or with fraudulent intent has destroyed, concealed, or failed to keep books of account from which his true financial condition may be ascertained, specifications in opposition to a bankrupt's application for a discharge, and the proofs in support thereof, must distinctly allege and establish one or more of the above grounds for refusing to discharge.—IN RE MCGURN, U. S. D. C., D. (Nev.), 102 Fed. Rep. 743.

14. BANKRUPTCY — Petition—Occupation of Debtor.—Under Bankr. Act 1898, § 4, providing that any natural person, except a wage earner or a person engaged chiefly in farming, may be adjudged an involuntary bankrupt, a petition in involuntary bankruptcy which does not show the business of defendant, or that he does not come within the excepted classes, is subject to demurrer on such ground.—IN RE TAYLOR, U. S. C. C. of App., Seventh Circuit, 102 Fed. Rep. 728.

15. BANKRUPTCY—Preferences — Creditor's Knowledge of Debtor's Insolvency.—In determining whether the taking of security by a creditor constitutes an illegal preference, under Bankr. Act 1898, § 60b, the creditor is not to be charged with knowledge of his debtor's financial condition from mere non-payment of his debt, or from circumstances which give rise to mere suspicion in his mind of possible insolvency. On the other hand, it is not essential that the creditor should have actual knowledge of, or belief in, his debtor's insolvency, but it is sufficient if he has reasonable cause to believe him insolvent. If facts and circumstances with respect to the debtor's financial condition are brought home to him such as would put an ordinarily prudent man upon inquiry, the creditor is chargeable with knowledge of the facts which such inquiry should reasonably be expected to disclose.—IN RE EGGERT, U. S. C. C. of App., Seventh Circuit, 102 Fed. Rep. 735.

16. BANKRUPTCY—Preferences—Renewal of Pledge.—A pledge of property to secure notes executed within four months prior to proceedings in bankruptcy against the pledgor is not voidable as an illegal preference under Bankr. Act 1898, where the notes so secured were renewals of prior notes also secured by a pledge of the same property; the original indebtedness having been created and the original pledge made prior to

the four-months period.—CHATTANOOGA NAT. BANK v. ROME IRON CO., U. S. C. C., N. D. (Ga.), 102 Fed. Rep. 755.

17. BANKRUPTCY — Sale of Partnership Property—Title of Trustee.—The sale by one partner to his co-partner, when the firm has become insolvent, or his entire interest in the business and property of the firm, and the subsequent *bona fide* sale by the succeeding partner to a third person of the entire property of the firm, which in his hands was exempt from execution, is not such a disposition of the property of the firm as can be avoided by the firm's trustee in bankruptcy, under Bankr. Act 1898, § 70, providing that the trustee may avoid any transfer by the bankrupt of his property which any creditor might have avoided, unless he was a *bona fide* holder for value prior to the date of adjudication.—IN RE RUDNICK, U. S. D. C., D. (Wash.), 102 Fed. Rep. 750.

18. BILLS AND NOTES — Indorsement — Protest—Waiver.—One defendant took a note to plaintiff bank for discount, which the president promised to do in case he would obtain the indorsement of the other defendants, and stamped on the back of it, in red ink, "I hereby waive demand and notice of demand, protest and notice of protest and non-payment," beneath which all of the defendants signed their names, when plaintiff discounted the note. Held, that the waiver of protest, etc., though in the singular number, was binding on all the indorsers.—FARMERS' EXCH. BANK OF SAN BERNARDINO v. ALTURA GOLD MILL & MIN. CO., Cal., 61 Pac. Rep. 1079.

19. BUILDING AND LOAN ASSOCIATIONS—Contracts—Ultra Vires.—A building and loan association organized and based on the mutual plan, which required its stock to be paid for in periodical partial payments, to continue till the payments, together with the earnings, shall equal the face value of the shares, by issue of a certificate whereby it agrees that the stock shall mature in a certain time gives one stockholder an advantage over others, and exceeds its powers.—PROVINCE v. INTERSTATE BLDG. & LOAN ASSN., Tenn., 58 S. W. Rep. 265.

20. BUILDING AND LOAN ASSOCIATIONS—Trial.—Under Shannon's Code, § 6235, providing that special issues shall be made up by the parties under the direction of the court, and set forth briefly and clearly the true questions of fact to be tried, where both parties formulated issues to be submitted to the jury, some of which were immaterial, it was not error for the trial court, in making up the issues, to submit portions of those formulated by each party, omitting those deemed immaterial.—BURTON v. FARMERS' BLDG. & LOAN ASSN., Tenn., 58 S. W. Rep. 280.

21. BUILDING CONTRACT — Release of Surety.—A provision in a bond executed by a surety company for and in behalf of a building contractor construed. Held, that a departure from the terms of the building contract as to changes and alterations in the plans and specifications did not operate to release or discharge the surety, unless such changes and alterations increased the cost of the building in a sum exceeding $300.—NORWEGIAN EVANGELICAL LUTHERAN BETHLEHEM CONGREGATION v. UNITED STATES FIDELITY & GUARANTY CO., Minn., 83 N. W. Rep. 487.

22. CARRIERS OF GOODS—Damages—Reasonableness.—Where plaintiff, in shipping pews to a certain church, informed the carrier that its contract with the church was a penalty contract, and directed immediate shipment, plaintiff's measure of damages in an action against the carrier for delay in delivery was the amount of forfeiture paid by it under the terms of the contract.—ILLINOIS CENT. R. CO. v. SOUTHERN SEATING & CABINET CO., Tenn., 58 S. W. Rep. 303.

23. CARRIERS OF PASSENGERS — Negligence.—One is not justified in riding on the steps of a passenger car, outside of the vestibule door, even though he has a ticket for passage on that particular train, and is unable to secure admission to the coach; and if one voluntarily assumes such risk, and is accidentally thrown from the train while it is running, he is not entitled to damages for personal injuries received thereby.—SANDERS v. CHICAGO, ETC. RY. CO., Okla., 61 Pac. Rep. 1075.

24. CHATTEL MORTGAGES — Description—Comity of Laws.—The description in a chattel mortgage as "my entire interest in crop of corn, fodder, oats, cotton, cotton seed, to be grown by me this present year, 1899," the property being further described as being in a certain county, being sufficient in the State in which the mortgage is executed, is sufficient for enforcement of the mortgage in another State to which the property is subsequently removed.—HUGHES v. ABSTON, Tenn., 58 S. W. Rep. 296.

25. CONTRACT—Building Contract—Rights of Owner—Liability to Material-Man.—The statute which required the owner who gave out a contract for the erection of a building on his land to retain 25 per cent. of the contract price, for the benefit of laborers and material-men, did not prevent such owner from making partial payments to the contractor from time to time as the work progressed, provided the aggregate of such payments did not exceed 75 per cent. of such contract price; and if, before the completion of the building according to the contract, the contractor abandoned the work and left the building uncompleted, it was the right of the owner to take possession of the same and complete it. If, in doing so, the amount required for completion, when added to the sums properly paid to the contractor, exceeded the original contract price, such owner was not liable to a material-man for any part thereof.—HUNNICUTT & BELLINGRATH CO. v. VAN HOOSE, Ga., 36 S. E. Rep. 669.

26. CONTRACT—Election.—Where one of the parties to a contract obligates himself to do one of two things on the performance of certain services by the other, the one making such alternative promise has a right to elect which alternative he will perform, provided he makes such election before default; but, if he fails to make such election in time, then the promisee may elect which alternative he will accept.—KRAMER v. EWING, Okla., 61 Pac. Rep. 1064.

27. CONTRACTS—Usury—Presumption.—A contract by which a commission merchant advances money to a merchant engaged in buying and selling cotton, and the latter agrees to ship a certain number of bales of cotton to the former, and to pay him $1.25 per bale for each bale under such number that he fails to ship him, is not usurious, if made in good faith to induce the shipment, and not as a mere device to evade the usury laws.—ALLEN-WEST COMMISSION CO. v. CARROLL, Tenn., 58 S. W. Rep. 314.

28. CORPORATION — Pleading—Estoppel.—A corporation cannot retain property under a transaction *ultra vires*, and at the same time repudiate its obligation under the same transaction. It cannot accept and retain borrowed money, and plead *ultra vires* to a suit for its recovery. The law interposes an estoppel.—TOPEKA CAPITAL CO. v. MARCH, Kan., 61 Pac. Rep. 876.

29. COUNTIES—Presumptions—Denial on Information and Belief.—In *mandamus* to compel the chairman of the board of county commissioners to sign a warrant, an allegation in the answer that defendant has no knowledge or information sufficient to form a belief as to whether there are sufficient funds in the treasury to pay the warrant, and therefore denies that there are sufficient funds, is not such a denial of the existence of funds as will put the petitioner to proof of the fact; the fact attempted to be denied being one which defendant ought to know, and had means of knowing, by reason of his office.—APPEL v. STATE, Wyo., 61 Pac. Rep. 1015.

30. CRIMINAL EVIDENCE—Homicide—Dying Declarations.—Where deceased was shot by defendant, and there was evidence that they had engaged in quarrels frequently for several years prior to the shooting, the admission of a statement of deceased, as a dying dec-

laration, that the shooting was wilful and malicious, is not objectionable as the mere statement of an opinion, without facts on which to base it, since there was testimony which tended to show that there were facts within the knowledge of the deceased on which he might have based an opinion, and it was not necessary for him to state them.—STATE v. LEE, S. Car., 36 S. E. Rep. 707.

31. CRIMINAL EVIDENCE — Homicide—Res Gestæ.—Where the State's theory was that a homicide was committed for the purpose of robbing deceased of money which defendant knew he intended to draw from the bank, evidence as to the amount of deceased's deposit was admissible, as tending to prove the motive.—STATE v. LUCEY, Mont., 61 Pac. Rep. 394.

32. CRIMINAL LAW—Burden of Proof.—An instruction, in a criminal case, throwing upon the defendant the burden of proving the matters of defense to the satisfaction of the jury, is erroneous, and is not cured by a general instruction giving the law as to the burden of proof and a reasonable doubt.—STATE v. GRINSTEAD, Kan., 61 Pac. Rep. 975.

33. CRIMINAL LAW—Dead Bodies—Disposing of for Dissection.—The unauthorized disposition and sale of a dead body of a human being for gain and profit is a common law misdemeanor of high grade, and *malum in se;* and an unsuccessful attempt to commit that offense is a misdemeanor indictable and punishable at common law, though there is no statute prohibiting such offense.—THOMPSON v. STATE, Tenn., 58 S. W. Rep. 218.

34. CRIMINAL LAW—Homicide — Arrest Without Warrant.—The court refused an instruction for the defendant to the effect that a sheriff and his deputies have no right to make an arrest of any person without lawful warrant, except the person has committed a felony, or is engaged at the time in a riot or unlawful assembly, or is about to commit a felony. Held, that the refusal was correct, because of the failure of the instruction to include the idea that the officer may arrest without warrant for any misdemeanor tending to a breach of the peace, when committed in view of the officer making the arrest.—ROBERSON v. STATE, Fla., 28 South. Rep. 424.

35. CRIMINAL LAW—Homicide—Instructions Defining Degree.—A charge given on the court's own motion, that the indictment was for murder in the first degree, and that the verdict should be either for murder in the first degree or acquittal, violates Code, § 3326, prohibiting a charge on the effect of the testimony unless requested to do so by one of the parties.—GAFFORD v. STATE, Ala., 28 South. Rep. 406.

36. CRIMINAL LAW—Homicide—Quarrelsome Disposition.—Where defendant claimed that he shot the deceased in self-defense, evidence that the deceased, in a quarrel with defendant a few weeks prior to the homicide, armed himself with an ice pick, was incompetent to show that the deceased was a quarrelsome and dangerous person, since it was a specific act in no way connected with the *res gestæ*.—STATE v. MIMS, Oreg., 61 Pac. Rep. 888.

37. CRIMINAL LAW—Homicide — Witnesses.—Where, in a criminal case, the defendant made application to have certain convicts in the State prison brought to the place of trial to testify in his behalf, and the court granted the application as to part, and ordered the depositions of the others taken, defendant has no cause of complaint, since an order for the production of such witnesses does not issue as a matter of right.—PEOPLE v. PUTTMAN, Cal., 61 Pac. Rep. 961.

38. CRIMINAL LAW — Information — Verification.—A verification on information and belief to a complaint in a criminal case is not sufficient to authorize a court to put the defendant upon trial for the offense charged therein. Such complaint should be sworn to positively, or the facts upon which the warrant should issue ought to be presented to the court by affidavit or by competent evidence.—MULKINS v. UNITED STATES, Okla., 61 Pac. Rep. 925.

39. CRIMINAL LAW—Larceny — Former Jeopardy.—Where one is indicted for stealing property of W, and on trial it is proved that the property belonged to A, and under the direction of the court the jury renders a verdict of not guilty, defendant is not placed in jeopardy, so as to bar a prosecution under another indictment charging him with stealing the same property, belonging to A.—STATE v. COUNCIL, S. Car., 36 S. E. Rep. 662.

40. CRIMINAL LAW—Larceny—Possession.—The possession of stolen property, unexplained, is evidence of guilt. But where a reasonable explanation is given, and there is no conflict of evidence in regard thereto, and the witness is not impeached, the jury cannot arbitrarily ignore such evidence.—STATE v. SEYMOUR, Idaho, 61 Pac. Rep. 1033.

41. CRIMINAL LAW — Rape—Indictment.—An indictment charging defendant that he did "carnally know and abuse" a female child under 16 years, without alleging the specific age of such child, is sufficient to allege a public offense under section 6524, Gen. St. 1894.—STATE v. ERICKSON, Minn., 83 N. W. Rep. 512.

42. CRIMINAL LAW—Receiving Stolen Goods.—Where the indictment in a prosecution for receiving stolen goods laid the ownership thereof in a railway company, proof that the company was engaged under a corporate name in carrying on the business of a public carrier was sufficient proof of its corporate existence to sustain a conviction.—STATE v. MISSIO, Tenn., 58 S. W. Rep. 216.

43. CRIMINAL LIBEL—Indictment — Defenses.—In an action for libel, where the words have the alleged slanderous meaning, not by their own extrinsic force, but by reason of the existence of some extraneous fact, this fact must be averred in traversable form, and it is not sufficient to plead such fact by way of innuendo only.—STATE v. ELLIOTT, Kan., 61 Pac. Rep. 981.

44. CRIMINAL LIBEL — Information — Innuendo.—Where, in all the counts of an information charging a criminal libel, matters explanatory of the publication, and necessary to be stated by way of inducement, are stated only by way of innuendo, and the offense is not complete from the publication itself, a motion to quash should have been sustained, since matters which should have been stated by way of inducement cannot be supplied by the innuendo.—STATE v. GRINSTEAD, Kan., 61 Pac. Rep. 976.

45. DAMAGES—Objections to Juror—Color.—A written objection by a juror to serving on a jury with another certain juror, on account of the color of the latter, although frivolous, unwarranted, and unworthy, forms no basis for an action at law for damages, especially where the objection was not accompanied by either abusive language or assault or defamation of character.—MCPHERSON v. MCCARRICK, Utah, 61 Pac. Rep. 1004.

46. DEED—Boundaries—Declarations.—Declarations of former owners in possession, whether dead or alive, and of a surveyor, are admissible to show corners of a grant.—MONTGOMERY v. LISCOMB, Tenn., 58 S. W. Rep. 306.

47. DESCENT AND DISTRIBUTION — Bastards.—Under Shannon's Code, § 4169, providing that where a woman dies intestate, leaving a natural born child, he shall take her estate by the general rules of descent and distribution, equally with her other children; and section 4163, subsec. 2a, providing that, if intestate die without issue, his land shall be inherited by his brothers and sisters, and if any such brother and sister die in intestate's lifetime, "leaving issue," such issue shall represent their deceased parent—an illegitimate child, the only son of his mother, who predeceased her sister, who died intestate without issue, takes the share of the estate of his mother's sister which his mother would have taken had she survived her sister.—DENNIS v. DENNIS, Tenn., 58 S. W. Rep. 284.

48. EJECTMENT—Evidence—Judgment Roll.—Where, in ejectment, title was claimed under an execution sale on a judgment against one to whom a patent had issued, and who was shown to have been in possession until shortly before commencement of the action, it was error to exclude from the evidence the judgment roll showing such judgment, the execution, levy, sale, and sheriff's deed.—ROBINSON v. THORNTON, Cal., 61 Pac. Rep. 946.

49. EJECTMENT—Improvements.—Where plaintiffs in such an action have been in possession of or enjoyed the rents, issues, and profits from lands of the defendant, which they had received in lieu of the lands involved in the suit, the latter has a right to plead such benefits derived by plaintiffs as a set-off to their claim for mesne profits against him.—MILLS v. GEER, Ga., 36 S. E. Rep. 673.

50. ELECTIONS — Ballots—Intent of Voters.—The intention of a voter, under our election law, must control in counting his ballot; but such intention must be shown and indicated by markings on the official ballot substantially in the manner provided by such law, and in *bona fide* attempt at compliance therewith.—TRUELSEN v. HUGO, Minn., 83 N. W. Rep. 500.

51. EVIDENCE — Personal Injury—Exhibit.—Plaintiff, as a witness, may not only exhibit, but move, his injured knee, to show the mature and extent of the injury, though by false and constrained movements he can exaggerate its injured condition, this not going to the competency, but the credibility, of the evidence.—ARKANSAS RIVER PACKET CO. v. HOBBS, Tenn., 58 S. W. Rep. 278.

52. FRAUDULENT CONVEYANCES—Chattel Mortgages—Mortgagor's Good Faith.—A chattel mortgage on a stock of merchandise and store fixtures given for the purchase price thereof provided that it should cover all future additions to the stock, and that the mortgagor should keep up the stock at all times to its then present value; that until default he might retain possession of the property, and use and enjoy the same, but if he made any attempt to sell any part of it without the written consent of the mortgagee he was authorized to take possession of it. Held (1) That the mortgage did not expressly nor by necessary implication provide that the mortgagor might sell the mortgaged property as his own, without applying the proceeds to the payment of the mortgaged debt, and that it was not, as a matter of law, fraudulent as to creditors. (2) The evidence sustains the findings of the trial court that the mortgage was made in good faith, and without any intention to defraud.—DONAHUE v. CAMPBELL, Minn., 83 N. W. Rep. 469.

53. GUARANTY — Discharge of Guarantor.—Where a contract on which defendant was liable as a guarantor was modified with his written consent, it was not necessary that the modified instrument should contain formal words of guaranty, in order to continue defendant's liability as guarantor. — PACIFIC PRESS PUB. CO. v. LOOFBOUROW, Cal., 61 Pac. Rep. 944.

54. HIGHWAY — Obstructing—Damages—Injunction.—The fact that, by defendant's obstruction of a public road, complainant is completely deprived of access to the only public road leading to her market town, constitutes such a peculiar and special damage to her as to enable her to maintain a bill to enjoin a continuance of the obstruction.—CABELL v. WILLIAMS, Ala., 28 South. Rep. 405.

55. HOMESTEAD—Mortgage — Extension—Wife's Consent.—The husband, without the consent of the wife, cannot, by contract with the mortgagee, extend the duration of a mortgage lien upon their homestead beyond its original term.—HARDMAN v. PORTSMOUTH SAV. BANK, Kan., 61 Pac. Rep. 994.

56. HUSBAND AND WIFE—Gift of Land—Reservation During Life.—An instrument executed by a husband, reciting a gift of land to the wife, to take effect after the husband's death, and reserving the right to sell or dispose of it during his life, in which event the instrument is to be void, is a testamentary devise, and not a deed, and hence did not vest any present interest in the land in the wife, which would pass by her conveyance during the life of the husband.—ELLIS v. PEARSON, Tenn., 58 S. W. Rep. 818.

57. HUSBAND AND WIFE—Wife's Liability for Contracts of Husband.—The obligation of a husband to pay a sum of money to the sureties on his bond as administrator of an estate in consideration of their suretyship and insurance premiums agreed to be paid by him for insurance upon his wife's property cannot be enforced against the separate property of the wife, where the acts of the husband were never ratified by the wife, and the obligations were contracted without her knowledge or consent. — CHANDLER v. CROSSLAND, Ala., 28 South. Rep. 420.

58. INJUNCTION—Threatening Suits for Infringement of Patents.—While the owner of a patent may lawfully warn others against infringement, and, by means of circulars or letters distributed among agents and customers of a manufacturer of goods claimed to infringe, give notice of his rights as he understands them, and of his intention to enforce them by suits, when done in good faith, the sending of such notices and circulars in bad faith, and without any intention of bringing the suits therein threatened, but solely for the purpose of destroying the business of such manufacturer, constitutes a fraudulent invasion of property rights, against which the party injured is entitled to relief in equity by injunction. — A. B. FARQUHAR CO. v. NATIONAL HARROW CO., U. S. C. C. of App., Third Circuit, 102 Fed. Rep. 714.

59. INSURANCE—Right of Subrogation.—Where plaintiff held a fire policy issued by defendant, containing a clause by which plaintiff agreed to subrogate defendant to all plaintiff's right to recover against others if defendant should pay a loss to plaintiff, and plaintiff recovered from a third party for a loss occasioned by its tort, in which recovery the loss on the property covered by the policy in suit, was not included, it is not necessary for defendant, in pleading the destruction of the right to subrogation as a defense to a suit on the policy, to allege payment or tender.—PACKHAM v. GERMAN FIRE INS. CO. OF BALTIMORE, Md., 46 Atl. Rep. 1066.

60. JUDGMENT—Matters Concluded.—An adverse decree entered on a petition of intervention filed in a creditors' suit against an insolvent railroad company, and seeking to establish and enforce a landlord's lien against property of the company for the rental of terminal facilities under a lease, does not preclude the intervener from filing a second petition asking payment, from a fund in court from the subsequent earnings of the road under the receivership, of rentals accruing under the lease within six months prior to the receivership.—MANHATTAN TRUST CO. v. SIOUX CITY & N. R. CO., U. S. C. C., N. D. (Iowa), 102 Fed. Rep. 710.

61. JUDGMENTS—Motion to Vacate—Fraud and Perjury.—A judgment recovered after trial to a jury, by an employee against a manufacturing corporation, for an injury alleged to have been caused by the incompetency of plaintiff's co-employees, will not be vacated on motion, after the expiration of the term at which it was rendered, on the ground that the judgment was obtained by means of a conspiracy between plaintiff and certain of his co-employees, to establish his case by testifying falsely to the incompetency of the employee who was the cause of the accident, where it is not shown that defendant has a meritorious defense, nor that the employee in question was not in fact incompetent.—MARYLAND STEEL CO. OF SPARROWS POINT v. MARNEY, Md., 46 Atl. Rep. 1077.

62. JUDGMENT BY DEFAULT—Setting Aside.—An affidavit by defendant's attorney in support of a motion to vacate a judgment taken by default was sufficient, without defendant's signature, where defendant was absent from the State under the attorney's advice that

his case would not be reached for trial for several months.—MELDE v. REYNOLDS, Cal., 61 Pac. Rep. 932.

63. LANDLORD AND TENANT—Lease—Covenant for Improvements.—A lease of ground made by an executor as trustee for the three minor devisees, provided for the appraisement of all permanent and valuable improvements at the termination of the lease, and that the extent to which such improvements enhanced the value of the property should be allowed and paid to the lessee by the estate of the lessor. Held, that such covenant did not run with the land, so that the same could be enforced by an assignee of the lease against an assignee of the reversion, where it was optional with the lessee whether to improve the lot, and the improvements were not made until after the execution of the lease.—CICALLA v. MILLER, Tenn., 58 S. W. Rep. 210.

64. LAW OF THE CASE—Judicial Notice—Decision of United States Supreme Court.—Where a State law as to a certain class of cases, has once been held by the Supreme Court of the United States to be in contravention of the constitution of the United States or *ex post facto*, a State court will, whenever thereafter a case of such class comes before it, take notice of the decision of the federal court, and of the question respecting which the decision was made.—STATE v. BATES, Utah, 61 Pac. Rep. 905.

65. LICENSE — Revocation.—An instrument which granted the right to enter upon premises at any time within five years, and to cut and remove therefrom all the standing pine, is a conveyance of an interest in the land, and not a license revocable at will.—BOLLAND v. O'NEAL, Minn., 83 N. W. Rep. 471.

66. LIMITATIONS—New Promise.—Where, after limitations had run against a claim, the debtor promised to pay it "when he became able," the statute began to run for the new period from the date of his becoming able, and not from the date of the new promise.—SCOTT v. THORNTON, Tenn., 58 S. W. Rep. 236.

67. LIMITATIONS — Presumption of Possession—Adverse Possession.—Under section 2861, Rev. St. 1898, the presumption is that one holding the legal title had been possessed of the land within the time required by law, unless it appears that the property was held and possessed adversely to him for seven years.—FUNK v. ANDERSON, Utah, 61 Pac. Rep. 1006.

68. MALICIOUS PROSECUTION—Advice of Magistrate.—An instruction, in an action for malicious prosecution, that if defendant fairly and fully laid the facts before a justice of the peace, and honestly sought his advice, for the purpose of bringing what defendant supposed was a criminal to justice, he was not liable, is erroneous, in making the mere seeking of the justice's advice sufficient to relieve from liability, without requiring the additional condition that the justice gave the advice sought.—MAULDIN v. BALL, Tenn., 58 S. W. Rep. 248.

69. MANDAMUS—Swamp Lands—Reclamation Funds.—Since Pol. Code, § 3477, requiring the county treasurer to pay amounts due on reclamation of swamp land to the original purchaser or his assigns, contemplates payment only to the owner or assignee of the indebtedness, *mandamus* will not lie to compel such a payment to one who is not shown to be the assignee of the claim on the fund of an original purchaser who became entitled thereto, though he claims as a successor in interest of such original purchaser, by virtue of a purchase of the land.—MILLER & LUX v. BATZ, Cal., 61 Pac. Rep. 935.

70. MARRIAGE PROMISE—Damages.—This is an action for breach of promise of marriage. The plaintiff testified that she was engaged to B, and at the solicitation of the defendant she broke her engagement and promised to marry him. The trial court instructed the jury to the effect that if the plaintiff broke her engagement with B at the solicitation of defendant, and on account of his promise to marry her, they might consider as an element of her damages her loss of the opportunity to marry B. Held, error.—HAHN v. BETTINGEN, Minn., 83 N. W. Rep. 467.

71. MARRIED WOMAN—Liability for Debt.—Under Act April 30, 1897, making a married woman engaged in business liable for her debts incurred therein, her mere recognition, after passage of the act, of the existence of notes theretofore given by her, does not make her liable therefor, even if a subsequent promise to pay them would do so.—LEVIS-ZUKOSKI MERCANTILE CO. v. BOWERS, Tenn., 58 S. W. Rep. 287.

72. MASTER AND SERVANT—Action for Services—Defenses.—In a suit by an employee against a railroad company for the balance of his wages, the company cannot legally defend by showing that the plaintiff had made a mistake whereby the company had suffered loss, which had been charged to an agent who was his superior, and under whom he was employed, and that in order to reimburse that agent it had stopped the wages of the plaintiff, such a course not being authorized by any rule of the company known to the employee, or agreed to by him.—GEORGIA R. CO. v. GOUEDY, Ga., 36 S. E. Rep. 691.

73. MASTER AND SERVANT—Contributory Negligence.—Code, § 3441, provides that, where the tracks of two railroads cross each other, engineers and conductors must stop their trains within 100 feet of the crossing, and not proceed until they know the way to be clear. Plaintiff's intestate, an engineer, brought his train into collision with that of defendant at a crossing, and was thereby killed. The night was dark; defendant's engine had no headlight, but a lantern instead; and the evidence was conflicting as to whether either train stopped within 100 feet of the crossing. Held, that plaintiff's intestate, by the exercise of extraordinary care, which the statute imposed on him, might have ascertained whether the track was clear, and, having failed to do so, was guilty of negligence contributory to his own death, and hence plaintiff could not recover therefor.—SOUTHERN RY. CO. v. BRYAN, Ala., 28 South. Rep. 445.

74. MASTER AND SERVANT—Defective Appliances—Injury to Servant.—An instruction that where a master allowed an independent contractor to erect appliances on his premises for the use of the contractor, and the master adopted and used such appliances himself, or acquiesced in their use by his servants while engaged in his work, he was responsible for his servants' safety as if he had erected the appliances himself, was proper, without submitting to the jury that such acquiescence must have been for such a period of time as would indicate an adoption by the master, since the word "acquiesced" was used by the court in the sense of "being satisfied with," and such acquiescence would amount to an adoption.—RINAKE v. VICTOR MFG. CO., S. Car., 36 S. E. Rep. 700.

75. MASTER AND SERVANT—Unsafe Place—Evidence.—Where plaintiff, while in defendant's employ, was knocked from the top of a freight car, which he was helping to switch to one of defendant's buildings, by being struck by a steam pipe crossing the side track and connecting two of the buildings, evidence that the steam pipe might, at small cost, and without injury to its efficiency, have been raised so as not to interfere with the defendant's employees riding on the top of its freight cars, was properly admitted.—RENNE v. UNITED STATES LEATHER CO., Wis., 83 N. W. Rep. 478.

76. MECHANIC'S LIEN—Enforcement.—The holder of a mechanic's lien for material furnished for the construction and erection of two buildings, the property of separate owners, but located upon adjoining real property, and erected as one structure, under an agreement between the contractor and the owners of each building, may enforce the lien against the separate property of each by showing the proportionate amount and value of the materials used in each building.—KINNEY v. MATHIAS, Minn., 83 N. W. Rep. 497.

77. MECHANIC'S LIEN—Priority—Prior Attachments.—

Acts 1897, ch. 78, provided that employees of any corporation doing business in the State should have a lien on all the corporate property for the amount due for services rendered during three months prior to a suit to enforce the same, which lien should be superior to all others, except liens to secure purchase money and liens created before the passage of the act. Plaintiffs claimed under the act, and defendants claimed under attachments for ordinary debts, levied a month prior to the commencement of plaintiff's suit. Held, that plaintiffs' lien was superior to that of defendants.—BUSHTON v. PERRY LUMBER CO., Tenn., 58 S. W. Rep. 269.

78. MORTGAGES—Foreclosure—Paramount Title.—In a proceeding to foreclose a mortgage where defendant claimed title to the property paramount to that of both mortgagor and mortgagee, she cannot set up such title in a cross complaint, and litigate it in the foreclosure proceedings.—MURRAY v. ETCHEPARE, Cal., 61 Pac. Rep. 930.

79. MORTGAGES—Notice of Sale—Publication.—Where a mortgage provided that, in case of foreclosure, notice of sale should be published at least three times before the sale in a paper published in the county, a notice of the sale published regularly for three weeks in a weekly paper in the county in all the copies of each issue except a few, which were to be sent to non-resident advertisers, was a substantial compliance with the requirements of the mortgage.—JOHNSON v. WOOD, Ala., 28 South. Rep. 454.

80. MORTGAGES — Trust Deed — Registration.—The preceding a defective registration of a deed of trust by statutory notation under Shannon's Code, § 567, is no protection to the grantee against a levy of a judgment creditor of the grantor, since the notation stood in place of a full and accurate registration, and gave the grantee priority over subsequent claimants only until the registration of the deed of trust.—SOUTHERN BLDG. & LOAN ASSN. v. RODGERS, Tenn., 58 S. W. Rep. 234.

81. MUNICIPAL CORPORATIONS — Repairing of Streets —Negligence.—Rev. St. § 1582, giving a right of action against cities for injuries sustained "by reason of defects or mismanagement of anything under control of the corporation," is broad enough to include an action for injuries sustained by an employee of the city by reason of defendant's mismanagement of a steam roller while repairing its streets.—BARKSDALE v. CITY OF LAURENS, S. Car., 36 S. E. Rep. 661.

82. MUNICIPAL CORPORATIONS—Street Improvements. —Under St. 1891, p. 201, § 7, subd. 1, providing that the costs of grading streets shall be assessed against the lots fronting thereon, such assessment should be made against the lots fronting on both sides; and hence an assessment of the total cost of grading one side of a street against the lots fronting on that side was invalid.—SAN DIEGO INV. CO. v. SHAW, Cal., 61 Pac. Rep. 1082.

83. NEGLIGENCE—Defective Premises — Evidence.—Evidence of repairs subsequent to an accident is not admissible to show negligence in allowing the premises to be in the condition they were at the time of the accident.—ILLINOIS CENT. R. CO. v. WYATT, Tenn., 58 S. W. Rep. 308.

84. NEGLIGENCE—Injury to Wife—Damages.—A husband may, in an action for damages resulting from injuries sustained by his wife by reason of the negligence and carelessness of another, in some cases, recover for the loss of his own time in attendance and nursing his wife. The value of the husband's time, however, while so engaged, is determinable with reference to its value as a nurse; but he cannot recover, in addition, for the loss of his time, as such, its value in his ordinary occupation, nor for the reasonable value of his time which he may have lost from his business.—WESTERN UNION TEL. CO. v. MORRIS, Kan., 61 Pac. Rep. 972.

85. NUISANCE—Maintenance.—An owner of land is entitled to build stables thereon in the manner best suited to his business, and such stables, if conducted in a reasonably proper manner, do not constitute a nuisance for which damages can be recovered by adjoining property owners.—HARVEY v. CONSUMERS' ICE CO., Tenn., 58 S. W. Rep. 316.

86. PARTITION—Mistake — Evidence.—Where land which, on an amicable partition, fell to the share of a wife, was conveyed by the other heirs to the husband, a court of equity can entertain an action to correct the mistake, and partition the lands as property of the wife.—SCHELLINGER v. SELOVER, N. J., 46 Atl. Rep. 1058.

87. PUBLIC LANDS—Entry of Timber Claim—Application.—Under 20 Stat. 89, §§ 2, 3, requiring the applicant for the purchase of timber lands to make affidavit that the land is unfit for cultivation and valuable chiefly for timber, the applicant must have personally examined the land, so as to be able to make said affidavit from his personal knowledge.—HOOVER v. SALLING, U. S. C. C., W. D. (Wis.), 102 Fed. Rep. 716.

88. PUBLIC LANDS—Location—Ratification.—A location of land under a headright certificate by one of the owners thereof is not ratified by the others by their act of selling the certificate, where they did not know of the location.—KIRBY v. ESTELL, Tex., 58 S. W. Rep. 254.

89. PUBLIC OFFICERS — Contracts.—When public officers or agents in good faith contract with parties having equal means of knowledge with themselves, they do not become personally liable, although they may have exceeded their authority.—FIRST NAT. BANK OF DETROIT v. BOARD OF COMRS. OF BECKER AND BELTRAMI COUNTIES, Minn., 88 N. W. Rep. 468.

90. QUIETING TITLE—Bill—Sufficiency—Foreclosure. —That a bill in a suit to quiet title asked the annulment of a sheriff's deed executed on a sale of the property under mortgage foreclosure did not render it demurrable as improperly uniting two causes of action, since the annulment of the deed was only a remedy incidental to the enforcement of plaintiff's right to the property, and did not in itself constitute a cause of action.—BERONIO v. VENTURA COUNTY LUMBER CO., Cal., 61 Pac. Rep. 953.

91. QUIETING TITLE — Limitations.—Since a deed made an exhibit and referred to in a complaint in equity controls the averments of the complaint in regard thereto, and the right of action on a sealed promise to pay a debt continues for 10 years, a complaint in equity, filed in 1897, to cancel a deed of trust which matured in 1888, alleging that it was barred by limitations, with a copy of the trust deed as an exhibit, did not show a good cause of action.—AMER. FREEHOLD LAND MORTG. CO. OF LONDON v. MCMANUS, Ark., 58 S. W. Rep. 250.

92. RAILROAD COMPANY — Injury to Animals—Negligence.—Where an engineer could have seen an animal, by keeping a proper lookout, when it came on or in dangerous proximity to the track, and the train was being run at the speed of 25 miles an hour, rendering it impossible to control it so as to avoid injuring the animal, the railroad company was liable to the owner of the animal for the jury.—CENTRAL OF GEORGIA RY. CO. v. STARK, Ala., 28 South. Rep. 411.

93. RELIGIOUS SOCIETIES—Review of Proceedings by Courts.—The court of chancery will not review the decisions or proceedings of ecclesiastical judicatures in matters properly within their province under the laws and regulations of the church.—TRAVERS v. ABBEY, Tenn., 58 S. W. Rep. 247.

94. REMOVAL OF CAUSES — Amount in Controversy—Jurisdiction.—To an action to restrain the prosecution of a suit in a State court because of the removal to the federal court of a previous suit based upon the same cause of action, which was still pending, defendant answered that, while in the writ filed in the first action his demand was placed at $2,500, it was his intention to claim only $1,500; that he paid the writ tax required by

the laws of the State upon that sum only; and the first action was dismissed, and the second suit brought, because of a mistake in the form of the action. Held that, no declaration having been filed in the first action, the amount in controversy must be determined from defendant's answer herein, and, it appearing that this was but $1,500, the federal court was without jurisdiction thereof, and the same should be remanded to the State court, and the injunction restraining the second action dissolved.—WESTERN UNION TEL. CO. v. WHITE, U. S. C. C., W. D. (Va.), 102 Fed. Rep. 705.

95. REMOVAL OF CAUSES — Foreign Corporations—Residence.—A railroad corporation, created under the laws of Virginia, which has complied with the requirements of Act March 19, 1896, providing that such foreign corporation shall thereupon become a domestic corporation, with all the rights and liabilities thereof, is still a non-resident of South Carolina, within the act of congress authorizing the removal of causes from State to federal courts on the ground of non-residence, and hence is entitled to have a cause against it in a State court removed to the United States court.—WILSON v. SOUTHERN RY. CO., S. Car., 36 S. E. Rep. 701.

96. RES JUDICATA—Contest of Will.—Where a contest of a will was dismissed because not stating a cause of action, such dismissal did not deprive contestant of the right to maintain a subsequent contest based on other grounds.—RALEIGH v. DISTRICT COURT OF FIRST JUDICIAL DISTRICT, Mont., 61 Pac. Rep. 991.

97. RES JUDICATA — Estoppel—Right of Way.—A railroad, by accepting the benefits of the deed of the owner of the fee of its right of way, in some directions extending and others narrowing its rights, is estopped to set up any claim to right of way under its charter inconsistent with the deed.—MOBILE & O. R. CO. v. DONOVAN, Tenn., 58 S. W. Rep. 309.

98. SPECIFIC PERFORMANCE — Attorney and Client—Contingent Fee — Public Policy.—Defendant agreed in writing to pay an attorney a contingent fee of one-third of all community property he might secure in an action for divorce against her husband, or by reason of any compromise or settlement thereof. The attorney assigned the contract to plaintiff, who sued for specific performance. Held, that the contract was void and unenforceable, as against public policy.—NEWMAN v. FREITAS, Cal., 61 Pac. Rep. 907.

99. TAXATION—Void Tax Sale—Lien.—A purchaser of lands at a tax sale is entitled to a lien on such lands for the purchase price and taxes subsequently paid, though such sale be void.—STROTHER v. REILLY, Tenn., 58 S. W. Rep. 837.

100. TAX CERTIFICATE—Assignment.—A tax certificate, and a valid assignment thereof, where the assignee claims title under a tax deed, are essential and necessary to the validity of the deed, and to the authority of the taxing powers to devest the title of the former owner or those claiming through him.—WILSON v. WOOD, Okla., 61 Pac. Rep. 1045.

101. TAX DEED — Recitals.—It is not competent for a tax-deed holder to introduce evidence to contradict the recitals of his tax deed.—HANENKRATT v. HAMIL, Okla., 61 Pac. Rep. 1050.

102. TRIAL—Special Issue — Submission.—Where a jury is instructed by the court, of its own motion, to find special answers to certain questions bearing upon vital issues in the case, which questions are submitted, the court is not at liberty, without the consent of the parties, to withdraw or disregard such questions by accepting a general verdict without answers thereto.—EISCHEN v. CHICAGO, ETC. RY. CO., Minn., 83 N. W. Rep. 490.

103. TRUST FUND—Life Estate—Pleading.—Where a bill to enjoin the payment of a trust fund to an administrator is broad enough to test the question of the final disposition of the fund, so that it can be sustained for that purpose, even though the fund were paid over temporarily to the administrator, a demurrer to the bill on the ground that the fund stands in the name of the deceased, and that therefore the administrator is entitled to collect the same, is bad as not disposing of the whole case made by the bill.—RUSSELL v. STATE NAT. BANK, Tenn., 58 S. W. Rep. 245.

104. WATERS AND WATER COURSES—Artificial Lakes—Shore Owners—Title.—The owners of land bordering on the shore of a meandered non-navigable or dried up lake own the bed of the lake in severalty. Their title extends to the center of the lake; the boundary lines of each abutting tract being fixed by extending, from the meander line on each side of the tract, lines converging to a point in the center of the lake.—SHELL v. MATTESON, Minn., 83 N. W. Rep. 491.

105. WATER RIGHTS—Limitation—Adverse Possession.—To bar the claim of a senior appropriator of water, by limitation or lapse of time, in favor of a junior appropriator, the latter must show continuous adverse possession and use in himself, accompanied by claim of title, and such possession and use as exclude the senior appropriator from the possession and use of such water.—BROSSARD v. MORGAN, Idaho, 61 Pac. Rep. 1031.

106. WILLS—Construction — Executory Devise—Executors.—Under a devise to certain persons named, and to the survivors of those dying without children, share and share alike, a deed by the several devisees will convey not only their present, but any after-acquired, interest in the lands devised, as survivors of the first devisees, unless a contrary intention appears, though one of the devisees be a married woman.—BRUCE v. GOODBAR, Tenn., 58 S. W. Rep. 282.

107. WILLS—Devise—Precatory Words.—Where testator devised all his property, both real and personal, to his wife, with power to sell, lease, and manage the business without order of the court, and in a subsequent and independent paragraph stated that it was his desire that his wife, on her death should devise to his relatives one-half of the property which she received under his will, the wife was entitled to the entire estate, free from any limitations or trust in favor of testator's relatives.—IN RE MARTI'S ESTATE, Cal., 61 Pac. Rep. 964.

108. WILL—Homestead.—While section 2829, Rev St. 1898, in terms gives absolutely property in the homestead and exempt personalty to the surviving husband or wife, yet by other terms of the section this power is limited, and the husband may by will dispose of the estate in excess of the homestead limits.—IN RE LITTLE, Utah, 61 Pac. Rep. 899.

109. WILLS—Intent of Testator.—A will made by a mother in favor of her dissolute son, gave her real estate in trust to her son S, for his use and benefit, after paying taxes and necessary repairs, withholding from him power to sell and convey, except at the option of the trustee, D, who was given power to sell when, in his judgment, he deemed it necessary and advisable; and in such event the conveyance to be a joint act between the trustee and the son. In case of the death of the son without issue, then all of said estate "so remaining in trust" should be sold and divided between parties mentioned in other parts of the will. Held that, to give effect to the intent of the testatrix, the will should be read, "I give and devise to D, in trust for my son, for his use and benefit," and that the trustee, and not the son, was entitled to control the estate.—JOBE v. DILLARD, Tenn., 58 S. W. Rep. 324.

110. WILLS — Powers — Execution — Trust Deeds.—Where a non-resident loan and trust company made a loan, and took a trust deed to secure it, before registration of its charter where the transaction took place, such transaction was validated by the subsequent filing of an abstract of the company's charter at such place; and the company was entitled to recover the amount actually loaned, with six per cent. interest.—LAW GUARANTEE & TRUST CO. v. JONES, Tenn., 58 S. W. Rep. 219.